

# **A Model County Shoreland Zoning Ordinance for Wisconsin's Shoreland Protection Program**

**October 1, 2014  
Revised January 12, 2015**



**Model County**

## SHORELAND ZONING ORDINANCE

### Statutory References and Policy Options

Adjacent to each section of the Model, the Department has referenced where that section is located in NR 115 or in other Statutes and Codes. A County is not required to adopt these references in its ordinance, but may utilize the references for organizational purposes in ordinance development. Additionally, this document contains text referencing policy options in Appendix A. These policy options are not required under NR 115 or Ch. 59 of the Wisconsin Statutes, but are provided as suggestions for counties in the effective implementation of their shoreland zoning ordinance.

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## **NOTICE AND HEARING REQUIRED**

A Class 2 notice under ch. 985, Wis. Stats. is required prior to county adoption of a shoreland zoning ordinance and a public hearing. A Class 2 notice consists of publication of the hearing notice on 2 consecutive weeks, the last at least 7 days prior to the hearing. Notice to the Department of Natural Resources Shoreland-Wetland zoning program of the proposed hearing and language. A request and issuance of a certificate of compliance is also required prior to final adoption.

## **PREFACE**

### **Revision Required**

This Model Shoreland Zoning Ordinance is an update of the Wisconsin Shoreland Protection Ordinance developed by the Department of Natural Resources in December of 1967 and updated in 1985, in 2010, and again in 2014. Initial revision was necessary when ch. NR 115, Wis. Adm. Code, was repealed and recreated in November 1980 to include wetland protection in shoreland areas. This model was written to assure compliance with the objectives of shoreland zoning enabling statutes 281 and 59.69 and to parallel as closely as possible the regulatory provisions of ch. NR 115, Wis. Adm. Code, which establishes minimum shoreland zoning ordinance standards.

### **Provisions Deleted**

These modifications are necessary to accomplish the purpose and goals of NR 115 as published on October 1, 2014. This model is one way to meet the standards as adopted including relevant case laws. As experience and case law demands we will periodically modify this language to stay consistent with current standards.

### **Shoreland Wetland Provisions**

Previous shoreland zoning standards contained in NR 115 allowed counties to adopt more restrictive land use regulations. This remains true for general shoreland provisions. However, ch. NR 115 currently contains absolute standards for permitted uses in shoreland wetlands which cannot be made more or less restrictive. Counties are encouraged to promote wetland protection in wetlands outside of the shoreland jurisdictional area.

### **Adopt the Model or Amend Your Existing Ordinance?**

The adoption of this model ordinance will meet the minimum standards contained in NR 115, which may be found at <http://legis.wisconsin.gov/rsb/code/nr/nr115.pdf>. In some cases, an existing ordinance may afford more effective shoreland management than what may be afforded by the model. Your county may choose to utilize the basic language, the basic language with some alternative, or may develop a completely new code. This decision is up to each county as long as the minimums are always maintained.

## **SHORELAND PROTECTION ORDINANCE**

### **1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE**

**1.1 STATUTORY AUTHORIZATION.** This ordinance is adopted pursuant to the authorization in ss. 59.692 Wis. Stats to implement 59.69, 59.692, 59.694, 87.30, 236.45, and 281.31.

**1.2 FINDING OF FACT.** Uncontrolled use of the shorelands and pollution of the navigable waters of \_\_\_\_\_ County will adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby

recognized by \_\_\_\_\_ County, Wisconsin.

**1.3 PURPOSE AND INTENT.** NR115.01 For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:

**1.31 FURTHER THE MAINTENANCE OF SAFE AND HEALTHFUL CONDITIONS AND PREVENT AND CONTROL WATER POLLUTION THROUGH:**

- (1) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
- (2) Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
- (3) Controlling filling and grading to prevent soil erosion problems.
- (4) Limiting impervious surfaces to control runoff which carries pollutants.

**1.32 PROTECT SPAWNING GROUNDS, FISH AND AQUATIC LIFE THROUGH:**

- (1) Preserving wetlands and other fish and aquatic habitat.
- (2) Regulating pollution sources.
- (3) Controlling shoreline alterations, dredging and lagooning.

**1.33 CONTROL BUILDING SITES, PLACEMENT OF STRUCTURES AND LAND USES THROUGH:**

- (1) Prohibiting certain uses detrimental to the shoreland-wetlands.
- (2) Setting minimum lot sizes and widths.
- (3) Setting minimum building setbacks from waterways.
- (4) Setting the maximum height of near shore structures.

**1.34 PRESERVE AND RESTORE SHORELAND VEGETATION AND NATURAL SCENIC BEAUTY THROUGH:**

- (1) Restricting the removal of natural shoreland cover.
- (2) Preventing shoreline encroachment by structures.
- (3) Controlling shoreland excavation and other earth moving activities.
- (4) Regulating the use and placement of boathouses and other structures.

**1.4 TITLE.** Shoreland Protection Ordinance for \_\_\_\_\_ County, Wisconsin.

**2.0 GENERAL PROVISIONS.**

**2.1 AREAS TO BE REGULATED.** Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of \_\_\_\_\_ County which are:

**2.11** Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (NR 115.03(8))

**See Policy Option in Appendix B**

**2.12** Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. (NR 115.03(8))

**See Policy Option in Appendix B**

**2.13** The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies. (NR 115.02)

**2.14** Determinations of navigability and ordinary high-water mark location shall initially be

made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark.

2.15 Under s. 281.31(2m) Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to lands adjacent to farm drainage ditches if:

- (1) Such lands are not adjacent to a natural navigable stream or river;
- (2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (3) Such lands are maintained in nonstructural agricultural use.

2.2 **SHORELAND-WETLAND MAPS** The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at

<http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland>

2.3 **COMPLIANCE.** (NR 115.04) The use of any land, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. Buildings and other structures shall require a permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this ordinance.

2.4 **MUNICIPALITIES AND STATE AGENCIES REGULATED.** Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when s. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022(1) Wis. Stats., applies.

2.5 **ABROGATION AND GREATER RESTRICTIONS.** (s. 59.692(5) Wis. Stats.) The provisions of this ordinance supersede all the provisions of any county zoning ordinance adopted under s. 59.69 and 59.692, Wis. Stats., which relate to shorelands. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

2.51 (s. 59.692(2)(a), Wis. Stats.) This ordinance shall not require approval or be subject to disapproval by any town or town board.

2.52 (s. 59.692(2)(b), Wis. Stats.) If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.

2.53 This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

2.54 The following provisions of the \_\_\_\_\_ County Zoning Ordinance are hereby incorporated by reference; these provisions shall only apply to the shoreland area where they impose greater restrictions than this ordinance otherwise imposes:

2.6 **INTERPRETATION.** (59.69(13)) In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the county and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this ordinance is required by a standard in ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the ch. NR 115 standards in effect on the date of the adoption of this ordinance or in

effect on the date of the most recent text amendment to this ordinance.

**2.7 SEVERABILITY.** If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

### **3.0 SHORELAND-WETLAND DISTRICT. (NR 115.04)**

**3.1 DESIGNATION.** This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

See Note section in Appendix B.

**3.11 LOCATING SHORELAND-WETLAND BOUNDARIES.** (NR 115.04(b)2.note) Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions, the county shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

**3.2 PURPOSE.** This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

**3.3 PERMITTED USES.** (NR 115.04(3)) The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30, 31, 281.36 and 281.37, Wis. Stats. and the provisions of other applicable local, state and federal laws:

**3.31** Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating except as allowed under sections 3.31 or 3.32.

- (1) Hiking, fishing, trapping, hunting, swimming, and boating;
- (2) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
- (3) The pasturing of livestock;
- (4) The cultivation of agricultural crops;
- (5) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
- (6) The construction or maintenance of duck blinds.

**3.32** Uses which do not require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:

- (1) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
- (2) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries,
- (3) The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level

of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible;

- (4) The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
- (5) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
- (6) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

**3.33 Uses which require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:**

- (1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
  - (a) The road cannot as a practical matter be located outside the wetland;
  - (b) The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.52;
  - (c) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
  - (d) Road construction activities are carried out in the immediate area of the roadbed only.
- (2) The construction or maintenance of nonresidential buildings, provided that:
  - (a) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;
  - (b) The building cannot, as a practical matter, be located outside the wetland;
  - (c) Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
  - (d) Only limited filling or excavating necessary to provide structural support for the building is authorized.
- (3) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:
  - (a) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Wis. Stats., where applicable;
  - (b) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 3.33(1)(a)-(d) and;
  - (c) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for



the purpose of improving wildlife habitat and to otherwise enhance wetland values.

- (4) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:
  - (a) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;
  - (b) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.52.

**3.4 PROHIBITED USES.** NR 115.04(4) Any use not listed in sections 3.31, 3.32 or 3.33 is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 3.5 of this ordinance and s. 59.69(5)(e), Wis. Stats.

**3.5 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT (NR 115.04(2))**

3.51 For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate office with the Department shall be provided with the following:

- (1) A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within 5 days of the filing of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland;
- (2) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
- (3) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and
- (4) Written notice of the county board's decision on the proposed amendment within 10 days after it is issued.

3.52 A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

- (1) Storm and flood water storage capacity;
- (2) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Shoreline protection against soil erosion;
- (5) Fish spawning, breeding, nursery or feeding grounds;
- (6) Wildlife habitat; or
- (7) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04 which can be accessed at the following web site:  
<http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf> .

3.53 If the Department notifies the county zoning agency that a proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 3.52 of this ordinance, that

amendment, if approved by the county board, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this amendment is mailed to the Department of Natural Resources. During that 30-day period the Department of Natural Resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under s. 59.692(6), Wis. Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.692(6) adoption procedure is completed or otherwise terminated."

#### **4.0 LAND DIVISION REVIEW AND SANITARY REGULATIONS (NR 115.05(2))**

**4.1 LAND DIVISION REVIEW. (NR 115.05(2))**The county shall review, pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

- (1) Hazards to the health, safety or welfare of future residents.
- (2) Proper relationship to adjoining areas.
- (3) Public access to navigable waters, as required by law.
- (4) Adequate stormwater drainage facilities.
- (5) Conformity to state law and administrative code provisions.

#### **4.2 Planned Residential Unit Development (PUD). (NR 115.05(1)(a)4.)**

**4.21 PURPOSE.** The Planned Residential Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Residential Unit Development at the time of its approval. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably on the shoreland, in perpetuity.

**4.22 REQUIREMENTS FOR PLANNED RESIDENTIAL UNIT DEVELOPMENT.** The county board may at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development Overlay District upon finding, after a public hearing, that all of the following facts exist:

- (1) **Area.** The area proposed for the Planned Residential Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on a navigable water.
- (2) **Lots.** Any proposed lot in the Planned Residential Unit Development that does not meet the minimum size standards of Section 5.2 and 5.3 shall be a non-riparian lot.
- (3) **Lot sizes, widths, setbacks, and vegetation removal.** When considering approval of a Planned Residential Unit Development the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in Section 7.2 shall apply except that maximum width of a lake frontage opening shall be 100 feet and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.

**Note –** Counties should be aware that the planned unit development standards, as written, grant back lot access (key holing) without applying frontage requirement standards to determine overall density. This comports to NR115.05(1)(a)4. Counties may optionally include requirements to limit overall density based upon minimum frontage standards as well. These types of developments may also be known as conservation subdivisions or

planned residential development. The provisions of NR 115.05(1)(a)4.) apply to these types of developments where there may be a combination of a density bonus, smaller lot size and preservation of open space.

See Policy Options in Appendix B

**4.3 SANITARY REGULATIONS (NR 115.05(3))** Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

- (1) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.
- (2) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with ch. SPS Comm 383, and after June 30, 1980 be governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Wis. Stats.

**5.0 MINIMUM LOT SIZE (NR 115.05(1))**

**5.1 PURPOSE (NR115.05(1)(a))** Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

See Policy Option in Appendix B

**5.2 'Sewered lots.' (NR 115.05(1)(a)1.)** MINIMUM AREA AND WIDTH FOR EACH LOT. The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet.

See Policy Options in Appendix B

**5.3 'UNSEWERED LOTS.' (NR 115.05(1)(a)2.)** MINIMUM AREA AND WIDTH FOR EACH LOT. The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet.

See Policy Options in Appendix B

**5.4 SUBSTANDARD LOTS (NR 115.05(1)(a)3.)** A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

See Note Section in Appendix B

**5.42 OTHER SUBSTANDARD LOTS.** Except for lots which meet the requirements of sections 5.4 a building permit for the improvement of a lot having lesser dimensions than those stated in sections 5.2 and 5.3 shall be issued only if a variance is granted by the board of adjustment.

**6.0 BUILDING SETBACKS. (NR 115.05(1)(b))** Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

**6.1 SHORELAND SETBACK. (NR115.05(1)(b)1.)** Unless exempt under 6.11, or reduced under 6.2,

a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures.

**6.11 EXEMPT STRUCTURES (NR 115.05(1)(b)1m.)** All of the following structures are exempt from the shoreland setback standards in subd 6.1:

- (1) Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

See Policy Option in Appendix B

- (2) Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Stats.
  - a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
  - b) The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
  - c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
  - d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

See Policy Option in Appendix B

- (3) Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.
- (4) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.
- (5) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS Comm 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
- (6) Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

See Policy Option in Appendix B

**6.2 REDUCED PRINCIPAL STRUCTURE SETBACK. (NR 115.05(1)(b)1.)** Existing development pattern means that principal structures exist within 250 feet of the proposed principal structure in both directions along the shoreline. Where there is an existing development pattern, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot within 250 feet of the proposed principle structure. The shoreland setback may not be reduced to less than 35-feet from the ordinary high-water mark of any navigable waters.

See Policy Option in Appendix B

**6.3 FLOODPLAIN STRUCTURES (NR 115.05(1)(b)2.)** Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

**7.0 VEGETATION (NR 115.05(1)(c))**

**7.1 PURPOSE. (NR 115.05(1)(c)1.)** To protect natural scenic beauty, fish and wildlife habitat, and

water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following: The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

**7.2 ESTABLISHMENT OF A VEGETATIVE BUFFER ZONE.** (NR 115.05(1)(c)2.) To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows.

- (1) The county may allow routine maintenance of vegetation.
- (2) The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.
- (3) The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2) (b), and described in Department publication “Wisconsin Forest Management Guidelines” (publication FR-226), provided that vegetation removal be consistent with these practices.
- (4) The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.
- (5) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

[See Policy Option in Appendix B](#)

**8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING (NR115.05(1)(d))**  
Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

[See Policy Option in Appendix B](#)

**9.0 IMPERVIOUS SURFACE STANDARDS. (NR 115.05(1)(e))**

**9.1 PURPOSE.** Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.

[See Policy Option in Appendix B](#)

**9.2 CALCULATION OF IMPERVIOUS SURFACE.** (NR 115.05(1)(e)1.) Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described

in 9.45 may be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

See Policy Option in Appendix B

**9.3 GENERAL IMPERVIOUS SURFACE STANDARD.** (NR 115.05(1)(e)2.) Except as allowed in sections 9.35 through 9.5 allow up to 15% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.

**9.31 IMPERVIOUS SURFACE STANDARD FOR HIGHLY DEVELOPED SHORELINES.** (NR 115.05(1)(e)2m.) The county at its discretion may adopt an ordinance for highly developed shorelines allowing up to 30% for residential land use and up to 40% for commercial, industrial or business land uses for lands that meets one of the following standards:

- (1) The highly developed shoreline is identified as an Urbanized Area or Urban Cluster in the 2010 US Census or has a commercial, industrial, or business land use as of January 31, 2013.
- (2) After conducting a hearing and receiving approval by the department of natural resources, the county has mapped additional areas of highly developed shorelines that are at least 500 feet in length and meet the one of the following criteria:
  - a) The majority of the lots are developed with more than 30% of impervious surface area.
  - b) Located on a lake served by a sewerage system as defined in NR 110.03(30), Wis. Adm. Code.

**9.4 MAXIMUM IMPERVIOUS SURFACE.** (NR 115.05(1)(e)3.) A property may exceed the impervious surface standard under 9.3 or 9.31 provided the following standards are met:

- (1) For properties where the general impervious surface standard applies under section 9.3, a property owner may have more than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.
- (2) For properties on shorelands where the impervious surface standard for highly developed shorelines applies under 9.31, a property owner may have more than 30% impervious surface but not more than 40% impervious surface for residential land uses. For commercial, industrial or business land uses a property owner may have more than 40% impervious surface but not more than 60% impervious surface.
- (3) For properties that exceed the standard under 9.3 or 9.31 but do not exceed the maximum standard under 9.4(1) or 9.4(2), a permit can be issued for development with a mitigation plan that meets the standards found in section 12.0.

**9.45 TREATED IMPERVIOUS SURFACES** (NR115.05(1)(e)3m.) Impervious surfaces that can be documented to show meet either of the following standards may be excluded from the impervious surface calculations under section 9.2.

- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (2) The runoff from the impervious surface discharges to an internally drained pervious area

that retains the runoff and allows infiltration into the soil ,

See Policy Option in Appendix B

**9.5 EXISTING IMPERVIOUS SURFACES.** (NR 115.05(1)(e)4.) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 9.3 or the maximum impervious surface standard in section 9.4, the property owner may do any of the following:

- (1) maintain and repair the existing impervious surfaces;
- (2) replace existing impervious surfaces with similar surfaces within the existing building envelope;
- (3) relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in s. Wis. Admin. Code NR 115.05 (1) (b).

9.51 This section of the ordinance shall not be construed to supersede other provisions in the county shoreland ordinance. Maintenance, reconstruction, replacement, relocation and expansion of existing structures must comply with other provisions in the county shoreland ordinance, the shoreland setback standards in sections 6.1 or 6.2 and the nonconforming structure provisions of sections 11.0 through 11.8.

**10.0 HEIGHT.** (NR 115.05(1)(f)) To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that result in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

See Policy Option in Appendix B

**11.0 NONCONFORMING USES AND STRUCTURES.** (NR 115.05(1)(g))

**11.1 PURPOSE.** To protect water quality, fish and wildlife habitat, and natural scenic beauty, some control is needed over the modification and reconstruction of these structures.

**11.2 GENERAL RULE FOR NONCONFORMING USES AND STRUCTURES.** Pursuant to s. 59.692(1s), Stats.,

- (1) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this s. 59.692 stats. may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
  - a) The nonconforming structure was damaged or destroyed after October 14, 1997..
  - b) The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
- (2) An ordinance enacted under s. 59.692, Wis. Stats. to which par. (1) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

See Policy Option in Appendix B

**11.3 DISCONTINUED NONCONFORMING USE.** (NR 115.05(1)(g)3.) If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.



**11.4 MAINTENANCE OF NONCONFORMING PRINCIPAL STRUCTURE. (NR 115.05(1)(g)4.)** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be maintained and repaired within its existing building envelope. Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

See Policy Option in Appendix B

**11.5 EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK. (NR 115.05(1)(g)5.)** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be expanded laterally or vertically, provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Vertical expansion is limited to the height allowed in section 10.0 and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0.
- (5) All other provisions of the shoreland ordinance shall be met.

**11.6 EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK. (NR 115.05(1)(g)5m.)** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under section 6.1, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per section 6.1 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per section 9.0.

**11.7 REPLACEMENT OR RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE. (NR 115.05(1)(g)6.)** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be replaced or relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement per section 6.1.
- (5) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0. include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.



- (6) All other provisions of the shoreland ordinance shall be met.

See Policy Option for Maintenance of Nonconforming Accessory Structures in Appendix B

**12.0 MITIGATION.** (s. 59.692(1v), Stats., NR 115.05 (1)(e)3., (g)5., (g)6.) When the county issues a permit requiring mitigation under sections 6.11(b)(4), 9.4, 11.5, 11.7, the property owner must submit a complete permit application, that is reviewed and approved by the county. The application shall include the following:

- (1) A site plan that describes the proposed mitigation measures
  - a) The site plan shall be designed and implemented to restore natural functions lost through development and human activities
  - b) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.
- (2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
  - a) The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds.

See Policy Options in Appendix B

**NOTE** Each county must select a mitigation system and codify that system in this ordinance that states the exact requirements. There are samples in Appendix C and there is a sample affidavit to the Register of Deeds in Appendix D. The department has developed mitigation recommendations to help guide the county as they develop the shoreland mitigation component of their ordinance. Those mitigation recommendations are available at <http://dnr.wi.gov/topic/ShorelandZoning/documents/MitigationRecommendations.pdf>.

### **13.0 ADMINISTRATIVE PROVISIONS.** (NR 115.23)

**13.1 ZONING ADMINISTRATOR.** (s. 59.18, Wis. Stats., NR 115.05(4)) The zoning administrator shall have the following duties and powers:

- (1) A system of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the office of the county zoning administrator.
- (2) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.
- (3) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.
- (4) A special exception (conditional use) procedure.
- (5) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.
- (6) Written notice to the appropriate office of the Department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under section 4.0.
- (7) Submission to the appropriate office of the Department, within 10 days after grant or denial any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.
- (8) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(9) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(10) The prosecution of violations of the shoreland ordinance.

### **13.2 PERMITS. (NR 115.05(4))**

**13.21 WHEN REQUIRED.** Except where another section of this ordinance specifically exempts certain types of development from this requirement, a permit shall be obtained from the zoning administrator or board of adjustment/committee before any new development.

**13.22 APPLICATION.** An application for a permit shall be made to the zoning administrator upon forms furnished by the county and shall include for the purpose of proper enforcement of these regulations, the following information:

- (1) Name and address of applicant and property owner.
- (2) Legal description of the property and type of proposed use.
- (3) A to scale drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways and the ordinary high-water mark of any abutting waterways.
- (4) Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
- (5) Plans for appropriate mitigation when required.
- (6) Payment of the appropriate fee.
- (7) Additional information required by the zoning administrator.

**13.23 EXPIRATION OF PERMIT.** Zoning permits shall expire (insert time) months from date issued if no substantial work has commenced.

See Policy Option in Appendix B

### **13.3 SPECIAL EXCEPTION PERMITS. (s. 59.69, 59,694, Wis. Stats.)**

**13.31 APPLICATION FOR A SPECIAL EXCEPTION PERMIT.** Any use listed as a special exception in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a special exception permit has been granted by the \_\_\_\_\_. To secure information upon which to base its determination, the \_\_\_\_\_ may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:

- (1) A plan of the area showing surface contours, soil types, ordinary high-water marks, ground water conditions, subsurface geology and vegetative cover.
- (2) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
- (3) Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
- (4) Specifications for areas of proposed filling, grading, lagooning or dredging.
- (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
- (6) Rationale for why the proposed special exception meets all of the special exception criteria listed in the ordinance

### **13.32 NOTICE, PUBLIC HEARING AND DECISION. (s. 59.694(6) Wis. Stats., NR 115.05(4)) Before**

deciding whether to grant or deny an application for a special exception permit, the board of adjustment shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the \_\_\_\_\_, shall be given as a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The \_\_\_\_\_ shall state in writing the grounds for granting or denying a special exception permit.

**13.33 STANDARDS APPLICABLE TO ALL SPECIAL EXCEPTIONS.** In deciding a special exception application, the \_\_\_\_\_ shall evaluate the effect of the proposed use upon:

- (1) The maintenance of safe and healthful conditions.
- (2) The prevention and control of water pollution including sedimentation.
- (3) Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
- (4) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
- (5) The location of the site with respect to existing or future access roads.
- (6) The need of the proposed use for a shoreland location.
- (7) Its compatibility with uses on adjacent land.
- (8) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
- (9) Location factors under which:
  - (a) Domestic uses shall be generally preferred;
  - (b) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
  - (c) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility. Additional standards such as parking, noise, etc...maybe refer to the applicable part of their ordinance.

**13.34 CONDITIONS ATTACHED TO SPECIAL EXCEPTIONS.** Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. Upon consideration of the factors listed above, the \_\_\_\_\_ shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance. In granting a special exception permit, the \_\_\_\_\_ may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to affect the purpose of this ordinance.

**13.35 RECORDING.** (NR 115.05(4)(g), (h)) When a special exception permit is approved, an appropriate record shall be made of the land use and structures permitted. Such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a special exception permit shall be provided to the appropriate office of the Department within 10 days after it is granted or denied.

**13.36 REVOCATION.** Where the conditions of a special exception permit are violated, the special exception permit shall be revoked.

**13.4 VARIANCES.** (s. 59.694(7), Wis. Stats. The board of adjustment may grant upon appeal a variance from the standards of this ordinance where an applicant convincingly demonstrates that:

- (1) literal enforcement of the provisions of the ordinance will result in unnecessary

- hardship on the applicant;
- (2) the hardship is due to special conditions unique to the property; and
- (3) is not contrary to the public interest.

**13.42 NOTICE, HEARING AND DECISION.** (s. 59.694(6), Wis. Stats.) Before deciding on an application for a variance, the board of adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The board shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate Department office within 10 days of the decision.

**13.5 BOARD OF ADJUSTMENT.** (s. 59.694 Wis. Stats.) The county executive, county administrator or chair of the county board shall appoint a board of adjustment consisting of 3 or 5 members under s. 59.694, Wis. Stats. The county board shall adopt such rules for the conduct of the business of the board of adjustment as required by s. 59.694(3), Wis. Stats.

**13.51 POWERS AND DUTIES.** (s. 59.694 Wis. Stats.)

- (1) The board of adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by s. 59.694, Wis. Stats.
- (2) It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
- (3) It shall hear and decide applications for special exception permits pursuant to section 13.3.
- (4) It may grant a variance from the standards of this ordinance pursuant to section 13.4.
- (5) In granting a variance, the board may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to effect the purpose of this ordinance.

**13.52 APPEALS TO THE BOARD.** (s. 59.694 Wis. Stats.) Appeals to the board of adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be made within 30 days, as provided by the rules of the board, by filing with the officer whose decision is in question, and with the board of adjustment, a notice of appeal specifying the reasons for the appeal. The zoning administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.

**13.53 HEARING APPEALS AND APPLICATIONS FOR VARIANCES AND SPECIAL EXCEPTION PERMITS.** (s. 59.694(6), Wis. Stats.)

- (1) The board of adjustment shall fix a reasonable time for a hearing on the appeal or application. The board shall give public notice thereof by publishing a Class 2 notice under ch. 985, Wis. Stats, specifying the date, time and place of the hearing and the matters to come before the board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate office of the Department at least 10 days prior to hearings on proposed shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations.
- (2) A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations shall be submitted to the appropriate office of the Department within 10 days after they are granted or denied.
- (3) The final disposition of an appeal or application to the board of adjustment shall be in the form of a written resolution or order signed by the chairman and secretary of the board. Such resolution shall state the specific facts which are the basis of the

board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.

- (4) At the public hearing, any party may appear in person or by agent or by attorney.

**13.6 FEES.** (ss. 59.69, 59.694, 59.696, 59.697, Wis. Stats.) The county board may, by resolution, adopt fees for the following:

- (1) Zoning permits.
- (2) Certificates of compliance.
- (3) Planned Unit Development reviews.
- (4) Public hearings.
- (5) Legal notice publications.
- (6) Special exception permits.
- (7) Variances.
- (8) Administrative appeals.
- (9) Other duties as determined by the county board.

**14.0 CHANGES AND AMENDMENTS.** The county board may from time to time, alter, supplement or change the regulations contained in this ordinance in accordance with the requirements of s. 59.69(5)(e), Wis. Stats, ch. NR 115, Wis. Adm. Code and this ordinance where applicable.

**14.1 AMENDMENTS.** Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.69(5), Wis. Stats.

**14.2 SHORELAND WETLAND MAP AMENDMENTS.** (NR 115.04) Every petition for a shoreland-wetland map amendment filed with the county clerk shall be referred to the county zoning agency. A copy of each petition shall be provided to the appropriate office of the Department within 5 days of the filing of the petition with the county clerk. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate office of the Department at least 10 days prior to the hearing.

**14.22** A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate office of the Department within 10 days after the decision is issued.

**15.0 ENFORCEMENT AND PENALTIES** (NR 115.05(4)(j)) Any development, any building or structure constructed, moved or structurally altered, or any use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator or the county zoning agency shall refer violations to the district attorney or corporation counsel who shall expeditiously prosecute violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars per offense, together with the taxable costs of action. Each day which the violation exists shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to s. 59.69(11), Wis. Stats.

See Policy Option in Appendix B

**16.0 DEFINITIONS.**

**16.1** For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

**16.2** The following terms used in this ordinance mean:

- (1) "Access and viewing corridor" (NR 115.03(1d)) means a strip of vegetated land that allows

safe pedestrian access to the shore through the vegetative buffer zone.

(2) "Boathouse" (NR 115.03(1h)) means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(3) "Building envelope" (NR 115.03(1p)) means the three dimensional space within which a structure is built.

(4) "County zoning agency" (NR 115.03(2)) means that committee or commission created or designated by the county board under s. 59.69(2)(a), Wis. Stats, to act in all matters pertaining to county planning and zoning.

(5) "Department" (NR 115.03(3)) means the Department of Natural Resources.

(6) "Existing development pattern" (NR 115.03(3m)) means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(7) "Floodplain" (NR 115.03(4)) means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.

(8) "Generally accepted forestry management practices" (NR 1.25(2)(b)) means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

(9) "Impervious surface" (NR 115.03(4g)) means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(10) "Maintenance and repair" (NR 115.05(1)(g)4.) includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

(11) "Mitigation" (NR 115.03(4r)) means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(12) "Navigable waters" (NR 115.03(5)) means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31(2)(d), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:

(1) Such lands are not adjacent to a natural navigable stream or river.

(2) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and

(3) Such lands are maintained in nonstructural agricultural use.

(13) "Ordinary high-water mark" (NR 115.03(6)) means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

(14) "Regional Flood" (NR 115.03(7)) means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.

(15) "Routine maintenance of vegetation" (NR 115.03(7m)) means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(16) "Shoreland" (NR 115.03(8)) means lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(17) "Shoreland setback" also known as the "Shoreland setback area" in s. 59.692(1)(bn) means an area in a shoreland of an established distance from the ordinary high-water mark within which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under section 59.692, Wis. Stats.

(18) "Shoreland-wetland district" (NR 115.03(9)) means a zoning district, created as a part of a

county zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(19) "Special exception (conditional use)" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(20) "Unnecessary hardship" (NR 115.03(11)) means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

(21) "Wetlands" (NR 115.03(13)) means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

## Appendix A

### Background Information Regarding Impervious Surfaces and General Suggestions for Implementing Impervious Surface Standards

The recodification of Chapter NR 115, Wis. Adm. Code in 2010 and again in 2014, creates impervious surface limits for riparian lots or parcels and lots or parcels that are entirely within the first 300 feet of the shoreland zone.

In that impervious surface standards will be new to many counties, the following information is being provided to help 1) better understand the reason and need for impervious surface standards and 2) shape policy options, ordinance revisions and hopefully ease some implementation concerns. In addition to reviewing this information the department also recommends each county, particularly those that have not had impervious surface limits in the past, to contact one or more of the 21 counties that currently limit impervious surfaces on shoreland lots. These counties could provide advice and insight on how their impervious surface limits were incorporated into their permitting system, impacts on staff workload and public outreach tools. To see which counties had impervious surfaces limits as of 2010 and the language in each ordinance, see

<http://dnr.wi.gov/topic/ShorelandZoning/documents/Wt54200/Chapter5.pdf>

#### Background Information

Impervious surfaces are hard surfaces, such as roofs, concrete, and asphalt that increase the amount and velocity of runoff to our lakes and rivers. The increase in runoff results in greater fluctuations in water levels, causes erosion, and transports sediment and pollution to our waterways.<sup>1</sup> It has been shown that a one acre parking lot generates sixteen times the runoff produced by one acre of undeveloped land.<sup>2</sup> Studies have shown that the consequences of impervious surfaces are degradation of aquatic habitat and an overall reduction in fish diversity.<sup>3</sup>

Over 20 years ago researchers found that aquatic insect diversity drops sharply in streams where the impervious surfaces in a watershed exceeded 10 to 15%.<sup>4</sup> Fine sediments from impervious surfaces have negatively impacted fish spawning, egg incubation and fry rearing in a study of 47 warm water streams in southeast Wisconsin.<sup>5</sup> The study found that fish and insect populations declined dramatically when impervious surfaces exceed about 8-10% of the watershed, and streams with more than 12% imperviousness were shown to have consistently poor fish communities.<sup>6</sup> The last page of this document contains a diagram, which further illustrates the negative impacts of impervious surfaces on fish communities. Other studies have also shown that urban development, including the impervious surfaces associated with it, results in declines of pollution-sensitive invertebrate groups such as mayflies, stoneflies, and caddisflies and a pronounced increase in pollution tolerant groups, such as midges and oligochaetes, in other words aquatic worms.<sup>7</sup>

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<sup>1</sup> Center for Watershed Protection. 2003. Impacts of Impervious Cover on Aquatic Systems: Watershed Protection Research Monograph. Center for Watershed Protection, Ellicott City, MD. Pages 1-158.

<sup>2</sup> Schueler, T.R. 1994. The importance of imperviousness. *Watershed Protection Techniques* 1:100-11. 1994a. Available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>. Masterson, J. P., Bannerman, R. T., Impacts of stormwater runoff on urban streams in Milwaukee County, Wisconsin. *National Symposium on Water Quality-American Water Resources Association*. 1994.

The importance of imperviousness. *Watershed Protection Techniques* 1:100-11, available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>.

<sup>3</sup> Center for Watershed Protection. 2003. Impacts of Impervious Cover on Aquatic Systems: Watershed Protection Research Monograph. Center for Watershed Protection, Ellicott City, MD. Pages 1-158.

<sup>4</sup> Klein, R. 1979. Urbanization and Stream Quality Impairment. *Water Resources Bulletin*. 15(4):948-963.

<sup>5</sup> Wang, L., J. Lyons, P. Kanehl, R. Bannerman, and E. Emmons 2000. Watershed Urbanization and Changes in Fish Communities in Southeastern Wisconsin Streams. *Journal of the American Water Resources Association*. 36:5(1173-1187); Wang, L., J. Lyons, and P. Kanehl 2001. Impacts of Urbanization on Stream Habitat and Fish Across Multiple Spatial Scales. *Environmental Management*. 28(2):255-266.

<sup>6</sup> Id. .

<sup>7</sup> Jones, R.C. and Clark, C.C., Impact of watershed urbanization on stream insect communities. *Water Resources Bulletin* 23:1047-55. 1987, Lenat, D.R., Crawford, J.K., Effects of land use on water quality and aquatic biota of three North Carolina Piedmont streams. *Hydrobiologia*. 194: 185-99. 1994).



Additional studies have shown that while the shift from agricultural to residential land uses reduces the rate of erosion into a lake, nutrient loading can actually increase with the development of the lakeshore.<sup>8</sup> It is significant to note that a study of Lac La Belle, in Waukesha County, showed that the water quality benefits associated with installation of sewer service to lakefront subdivisions were offset by increases in nutrient loading and habitat degradation from lakefront development, resulting in a decline in water quality.<sup>9</sup> Research over the past 15 years shows a strong correlation between the amount of impervious surface in a watershed and the health of the receiving stream<sup>10</sup> with degradation of stream water quality and habitat as watersheds become more densely developed.<sup>11</sup>

Therefore, to offset the impacts from impervious surfaces and prevent further impacts from development of Wisconsin's shoreland zones, the statewide minimum standards under NR 115 contain provisions to protect our waterways and require the implementation of a shoreland mitigation plan.

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<sup>8</sup> Garrison, P. Lake Ripley paleoecological study. Wisconsin Department of Natural Resources. 1993

<sup>9</sup>Garrison, P. Wisconsin Department of Natural Resources, letter to L. Conley, Sept. 6, 1995

<sup>10</sup> Arnold, C. L., Gibbons, C. J., Impervious Surface Coverage: The emergence of a key environmental indicator. *Journal of American Planning Association*. 62(2): 243-258.1996

<sup>11</sup> Schueler, T. R., The importance of imperviousness. *Watershed Protection Techniques*.1:100-11.1994a. Available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>.

Masterson, J. P., Bannerman, R. T., Impacts of stormwater runoff on urban streams in Milwaukee County, Wisconsin. *National Symposium on Water Quality-American Water Resources Association*. 1994.

## **PROVISIONS IN NR 115**

### **APPLICABILITY & DEFINITION**

While statutorily shoreland zoning applies to any land within 1000 feet of the a lake and 300 feet of a navigable stream or river, the impervious surface standards in NR 115.05(1)(e), Wis. Adm. Code are only applicable to riparian lots and parcels or lots and parcels that are located entirely within 300 feet of the ordinary high water mark. Further, the definition of an impervious surface in NR 115.03(4g) identifies areas that release as runoff “all or a majority of the precipitation that falls on it” and the typical structures located on shoreland lots that would be considered impervious. However, while the definition lists such things as “rooftops, sidewalks, driveways, parking lots and streets” as impervious, it does provide that even these typical impervious surfaces could be considered pervious if the areas are “specifically designed, constructed and maintained to be pervious.” Pervious surfaces are those that are designed, constructed and maintained to infiltrate a majority of the precipitation that falls on it. Pervious surfaces are further discussed later in this appendix.

### **GENERAL IMPERVIOUS SURFACE STANDARD**

The general impervious surface standard in NR 115.05(1)(e)2. and 3.a., Wis. Adm. Code, is the standard that will apply to most shoreland areas in the state, unless a county develops an ordinance incorporating the highly developed shoreland standards as described below. The general impervious surface standard in NR 115 would allow a property owner to increase the impervious surfaces on the property up to 15%. However, if the property owner proposes to exceed 15% and add more impervious surface to the property, then the property owner must obtain a permit that includes a mitigation plan. Property owners may increase their impervious surfaces on their property up to 30%, unless the impervious surfaces are treated, which will be described below, or the property owner obtains a variance from the Board of Adjustment or Board of Appeal.

### **HIGHLY DEVELOPED SHORELINE IMPERVIOUS SURFACE STANDARD**

An option exists for a county to designate highly developed shorelines in regard to impervious surface standards. The highly developed shoreline (HDS) impervious surface standards in NR 115.05(1)(e)2m. and 3.b., Wis. Adm. Code, were established to reduce the administrative burden of implementing and the need for variances from the general impervious surface standard for shorelines that are already highly developed and would struggle to meet the general impervious surface standard.

The HDS impervious surface standard in NR 115 would allow a property owner to increase the impervious surfaces on the property up to 30% for residential lots and 40% for commercial, industrial or business land uses without obtaining a permit. However, if the property owner proposes to exceed the 30% or 40% limit and increase the impervious surfaces on the property, then the property owner would have to obtain a permit from the county and submit and implement a shoreland mitigation plan.

### **IDENTIFICATION OF HIGHLY DEVELOPED SHORELINES**

In developing a shoreland ordinance that incorporates the standards for a highly developed shoreline, the county will have to establish a map showing those shorelines determined to be

highly developed. The simplest areas to designate as highly developed shorelines are those areas within a county that are shown to be an Urbanized Area or Urban Cluster in the 2010 US Census. The 2010 US Census maps, with the Urbanized Area and Urban Cluster layers are available at <http://tigerweb.geo.census.gov/TIGERweb2010/>.

Other areas that will require little effort for the counties to designate as highly developed are those shorelines where the county has land use maps that show shorelines are currently developed in commercial, business or industrial land uses and lakes that are served by a sewerage system. It is important to note that a sewerage system does not include the plumbing inside of the building or the plumbing connecting the building to a private sewage treatment system but it means a system of pipes, conduits and other structures whose purpose is to collect, treat, and dispose of sewage, typically constructed by a public entity. If there are additional areas that a county would like to classify as highly developed and that do not meet any of the previously mentioned options, counties could still classify those areas as highly developed if the shoreline is at least 500 feet in length and a majority (>50%) of its lots are already developed with more than 30% of impervious.

#### TREATED IMPERVIOUS SURFACE STANDARD

When calculating the impervious surfaces on a lot, counties may also exclude impervious surfaces where the property owner can show that the runoff from the impervious surface is being treated via a stormwater pond, constructed wetland, infiltration basin, rain garden, bioswale, or other engineered system. Additionally if the runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil, counties may exclude those areas from the impervious surface limits.

#### EXISTING IMPERVIOUS SURFACE STANDARD

Recognizing that many shoreland properties are currently developed, the existing impervious surface provisions under NR 115.05(1)(e)4. allow property owners to maintain and repair existing areas of impervious surface. Property owners may also replace existing impervious surfaces with a similar impervious surface of the same three dimensional size or relocate or modify an existing impervious surface, as long as it does not result in an increase in impervious surfaces on the property and the structure meets the shoreland setbacks. It is important to note that the provisions for existing impervious surfaces under NR 115 are not stand alone provisions and any structure, which is maintained, replaced, or otherwise modified, must comply with all other provisions in the county ordinance.

#### SURFACES DESIGNED, CONSTRUCTED AND MAINTAINED TO BE PERVIOUS

In order for a surface to be considered pervious, it would have to infiltrate a majority of the precipitation that falls on it. There are a couple of ways a county could figure out if the proposed product meets the standards in NR 115. Whatever method is used, it should be clearly identified and explained in the ordinance.

The first is to require that an engineering analysis be completed using stormwater models. According to stormwater staff, this method might be the most accurate method of determining whether a proposed pervious product is infiltrating all or a majority of the runoff. This method would be expensive and quite rigorous for small areas such as patios. If interested in this method, the department can provide a link to appropriate guidance.

The second method is to figure out how much average precipitation the county gets each year and then tell the contractor that the product must infiltrate either all of that precipitation or

at least more than 50% of the precipitation. The contractor or property owner must provide proof of product claim and the conditions that must exist for the product to be effective. The soils that are present will also make a difference with regard to infiltration rate. Once a county determines the infiltration rate for that particular site, the county would merely compare the infiltration rate for that pervious product with the infiltration rate for the native soil. As long as the pervious product infiltrated as much as what the soil would have been capable of, then the product meets the intent of NR 115.

Websites that could be used to assist in utilizing this method are:

<http://www.crh.noaa.gov/mkx/climate/wipcpn.gif>

[http://pubs.usgs.gov/wri/wri034250/pdf/wrir-03-4250\\_plate2.pdf](http://pubs.usgs.gov/wri/wri034250/pdf/wrir-03-4250_plate2.pdf)

<http://websoilsurvey.nrcs.usda.gov/app/>

Surfaces that are designed to be pervious must be installed and maintained to manufacturer specifications, otherwise they are assumed not to function as pervious surfaces. The department highly recommends the county require a maintenance agreement in the ordinance to help ensure the surfaces remain pervious.

## **SUGGESTIONS FOR IMPLEMENTATION**

### **REVIEW CURRENT PERMITTING SYSTEM**

In the process of amending a county's shoreland zoning ordinance to incorporate the impervious surface standards, the department suggests that each county review its ordinance to identify when permits are currently required, the informational requirements for each permit and whether modification of the permitting system will be necessary to implement the impervious surface standards. Counties should evaluate whether there are foreseeable activities that would increase the impervious surfaces on a property, but would not currently require a permit from the County. A concern that has been expressed is that current ordinances often do not require a permit for the paving an existing driveway. Existing impervious surfaces, within the same footprint, can be resurfaced as long as all other ordinance provisions (setbacks, nonconforming, etc.) are met. For properties that do not currently have a driveway, a county may want to require a permit, especially if there is a concern that more than 15% of the property would be in impervious surfaces. Typically, if the property is vacant and construction is proposed, most counties already require building permits and the review of the impervious surfaces, including the addition of a driveway, could be incorporated into the process at the time building permits are issued. In other words, some type of administrative mechanism will need to be put in place so that the percentage of impervious surface can be tracked and approved/denied when proposed. This is to the county's benefit so that unintended violations do not occur based on a "nothing is required" approach.

Further, there are many instances where the impervious surface limits can be incorporated into a county's existing permitting processes or system without substantially modifying it. For example, if the current ordinance requires the submittal of a plat of survey or a site plan, then the survey or site plan could also be utilized to calculate the impervious surface limits on the parcel. Certainly, counties may have to modify their existing forms to allow for documentation of existing and proposed impervious surfaces, or require property owners to attach a form identifying areas of impervious surfaces and pervious surfaces, as well as internally drained areas. The WCCA NR 115 Guidebook provides example forms, which counties may utilize and require for permit submittals.

## DETERMINE THE EXTENT OF THE IMPERVIOUS SURFACES LIMITS

As mentioned above the impervious surface standards are applicable to riparian lots or parcels or non-riparian lots or parcels that are entirely within 300 feet of the ordinary high water mark (OHWM). While many riparian lots or parcels are located within 300 feet of the OHWM there could be situations where riparian lots or parcels are larger and extend beyond 300 feet from the ordinary high water mark (OHWM). As is typical with most of the standards in NR 115, counties could choose to be more restrictive and regulate the impervious surface limits on properties beyond 300 feet or properties where only a portion of the property lies within 300 feet of the OHWM.

The WCCA NR 115 Guidebook lists a number of options for counties to determine if the entire lot falls within 300 feet of the ordinary high water mark, see Chapter 2 starting on page 8. In addition to those options listed in the Guidebook, the department's surface water data viewer has a tool, which measures the rough approximate area of an object that counties could utilize in conjunction with the aerial photos to determine the extent of existing impervious surfaces on the lot. The link to the surface water data viewer is <http://dnr.wi.gov/topic/surfacewater/swdv/>. Additional websites, such as google maps, allow users to zoom to search by a property's address and contains tools to allow the measuring of distances, which could then be utilized to calculate the area of impervious surfaces on the lot. Each county will have to determine which option(s) would best suit their needs.

## IDENTIFICATION OF IMPERVIOUS SURFACES

While the definition of an impervious surface in NR 115 provides a list of structures that would be considered impervious surfaces, it does not identify many of the other common structures that are typically found in shoreland zones such as retaining walls, children's play structures, decks, stairs, and swimming pools. In the process of amending a county ordinance to incorporate the impervious surface standards, it will be important for counties to discuss what will be identified as impervious. Reason dictates that certain minor structures should not be calculated when determining the impervious surfaces on a property. For example, certain structures such as fences, birdhouses, mailboxes, flagpoles and other such structure would be difficult for counties and the public to calculate the impervious surface area for each of these structures and the runoff that occurs from these structures is typically minimal. However, some other common structures, such as retaining walls, decks, stairs, children's play structures, and gravel driveways, will require some thought and consideration by the county.

Calculating the area of a retaining wall could be difficult depending upon the type of material and how the wall was constructed. It has been the policy of the shoreland zoning program since the 1980's that retaining walls are structures, and should only be constructed in the shoreland zone when determined necessary to reduce or control existing identified erosion or runoff problems. . Consequently, some counties may choose to exclude retaining walls from the calculations since those walls serve to reduce erosion and control runoff. Other counties may choose to include retaining walls in calculating impervious surfaces particularly, when previously built walls serve mainly as an aesthetic feature on the landscape.

Similarly, counties will have to determine if children's play structures should be calculated in determining the impervious surface limits on a property. In deciding whether to include children's play structures in the impervious surface calculations, the county should perhaps consider whether these structures are currently allowed within the shoreland setback and whether there is a difference between relatively small residential children's play structures and the larger more commercial looking children's play structures that are becoming more popular

on the landscape.

The department has received numerous questions about whether decks and stairs should be included when calculating the percentage of impervious surface. While some counties may choose to always include stairs and decks in this calculation, the department has determined that counties may also choose to exclude these structures under certain circumstances. Decks and stairs may be excluded when calculating the percentage of impervious surface if there is sufficient spacing between the wood or composite boards and the structure is sufficiently elevated to both allow 1) water to drain through the structure and 2) vegetation under the deck or stairs to grow. Additionally, decks and stairs above a pervious surface may be excluded when calculating the percentage of impervious surface. However, if there is a patio or enclosed porch beneath the elevated deck then the dimensions of the deck and/or the hard surface beneath the deck should be included when calculating the percentage of impervious surface.

### MEASURING THE IMPERVIOUS SURFACES ON A PROPERTY

The WCCA NR 115 Guidebook lists a number of options for calculating the area of impervious surface, see Chapter 2 starting on page 8. Quite a few counties require surveys to be included in the application materials. A survey can continue to be utilized for all future projects by adding the % impervious surface proposed and authorized. Utilizing a survey option also ensures that all other ordinance requirements are being met. Sometimes property owners, especially new property owners, don't even realize a survey has been completed and is on file with Real Property Listing which is another resource that should be checked. Additionally *most counties now have good GIS tools and sometimes even an impervious surfaces layer*. Websites, such as google maps, allow users to zoom to search by a property's address and contains tools to allow the measuring of distances, which could then be utilized to calculate the area of impervious surfaces on the lot. It will be important to note if the aerial used is current. Each county will have to determine which option or options would best suit the needs of the county and its residents. In those counties where dense tree cover may limit the ability to calculate impervious surfaces based upon GIS or aerial photos, counties may wish to rely on one of the alternative options mentioned in the Guidebook.

### CONSIDERATIONS

It is important to note that the impervious surface regulations and standards are not stand alone provisions that trump other regulations in the shoreland ordinance. Nonconforming structure standards, 200 square foot gazebo law, new construction setbacks and shoreland vegetation standards are all applicable in concert with impervious surface standards. For example, a lateral expansion might be allowed under the nonconforming provisions but may not meet the impervious surface standards.. It is also important to remember that if the intention is to replace an impervious surface that is a nonconforming structure with a similar one and that nonconforming structure is removed, its nonconforming status no longer exists. All ordinance provisions, including the required setback from the ordinary high water mark need to be applied.

## Appendix B Policy Options

### **2.11 Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (NR 115.03(8))**

#### **Policy Option**

Lakes, ponds or flowages in \_\_\_\_\_ County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication FH-800 2009 "Wisconsin Lakes" book available electronically at the following web site: <http://dnr.wi.gov/org/water/fhp/lakes/lakemap/> or are shown on United States Geological Survey quadrangle maps (1:24,000 scale), or other zoning base maps.

### **2.12 Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. (NR 115.03(8))**

#### **Policy Option**

Rivers and streams in County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps (1:24,000). Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas

### **3.1 DESIGNATION. This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.**

**3.1 Note:** Be sure to include reference to the most recent version of the Wisconsin Wetland Inventory. Many counties have received new inventory data in the past several years but have not initiated an amendment to incorporate that into their ordinance. It is recommended that instead of making a specific reference to the year of the update that you make reference the Department of Natural Resources Surface Water Data Viewer for your mapping reference. It is also important to recognize that there is no specific reference to acreage and should not be referenced in ordinance text.

### **4.22 REQUIREMENTS FOR PLANNED RESIDENTIAL UNIT DEVELOPMENT. The county board may at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development Overlay District upon finding, after a public hearing, that all of the following facts exist:**

- (1) Area. The area proposed for the Planned Residential Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on a navigable water.**
- (2) Lots. Any proposed lot in the Planned Residential Unit Development that does not meet the minimum size standards of Section 5.2 and 5.3 shall be a non-riparian lot.**

#### **Policy Options**

- (3)** Vegetative buffer zone and preservation of ground cover. The location of lots and the dedication of part of the land for use by the public or residents of the Planned Residential Unit Development shall preserve the vegetative buffer zone and ground cover of the shoreland to enhance scenic beauty of the navigable water, prevent erosion, and provide wildlife habitat. In cases where the vegetative buffer does not exist it shall be reestablished. All lands not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the county, town or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to owners of lots in the development, a homeowner's association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by

covenant, grant of easement or any other manner which was required by a public body or which names a public body as grantee, promisee or beneficiary, shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.

- (4) **Density.** The number of platted lots shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total area of the subdivision by the minimum lot size required by Section 5.0 of this ordinance.
- (5) **Lot sizes, widths, setbacks, and vegetation removal.** When considering approval of a Planned Residential Unit Development the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in Section 7.2 shall apply and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.

#### **Policy Option**

The maximum width of a lake frontage opening shall be 100 feet.

**Note – Counties should be aware that the planned unit development standards, as written, grant back lot access (key holing) without applying frontage requirement standards to determine overall density. This comports to NR115.05 (1)(a)4. Counties may optionally include requirements to limit overall density based upon minimum frontage standards as well.**

#### **Policy Option**

**4.23 PROCEDURE FOR ESTABLISHING A PLANNED RESIDENTIAL UNIT DEVELOPMENT DISTRICT.** The procedure for establishing a Planned Residential Unit Development district shall be as follows:

- (1) **Petition.** A petition setting forth all of the facts required in Section 4.22 shall be submitted to the county clerk with sufficient copies to provide for distribution by the clerk as required by Section 13.1f..
- (2) **Review and Hearing:** The petition shall be submitted to the county zoning agency established as required by s. 59.69(3)(d), Wis. Stats., which shall hold a public hearing and report to the county board as required by law. Copies of the petition and notice of the hearing shall also be sent to the appropriate office of the Department as described in Section 13.42 of this ordinance.

The county zoning agency's report to the county board shall reflect the recommendations of any federal, state or local agency with which the county zoning agency consults.

- (3) **Findings and Conditions of Approval.** The county board shall make written findings as to the compliance or noncompliance of the proposed overlay district with each of the applicable requirements set forth in Section 4.22. If the petition is granted in whole or part, the county board shall attach such written conditions to the approval as are required by and consistent with Section 4.22. The conditions of approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, width, setbacks, dimensions of vegetative buffer zone and open space requirements.
- (4) **Planning Studies.** A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provisions of Section 4.22 or may be required to contribute funds to the county to defray all or part of the cost of such studies being undertaken by the county or any agency or person with whom the county contracts for such work.



**5.1 PURPOSE (NR115.05(1)(a))** Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

**Policy Option**

In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

**5.2 'Sewered lots.' (NR 115.05(1)(a)1.) MINIMUM AREA AND WIDTH FOR EACH LOT.** The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet.

**Policy Options**

**(choose one of the following)**

1. The width shall be calculated by averaging measurements at the following 3 locations:
  - a) The ordinary high water mark.
  - b) The building setback line.
  - c) One other location on the lot within 300 feet of the ordinary highwater mark.
1. The width shall be calculated by averaging the measurements at the following locations:
  - a) The ordinary high water mark
  - b) The building setback line
  - c) The rear lot line

**Policy Option**

**5.22 SIDE YARDS.** There shall be a side yard for each principle structure building. The minimum width of one side yard shall be 8 feet. The minimum combined width of both principle side yards shall be 20 feet. There shall be a side yard of 5 feet for accessory structures excluding fences.

**5.3 'Unsewered LOTS.' (NR 115.05(1)(a)2.) MINIMUM AREA AND WIDTH FOR EACH LOT.** The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage at the ordinary high-water mark.

**Policy Options**

**(choose one of the following)**

1. The width shall be calculated by averaging measurements at the following 3 locations:
  - a) The ordinary high water mark.
  - b) The building setback line.
  - c) One other location on the lot within 300 feet of the ordinary highwater mark.
1. The width shall be calculated by averaging the measurements at the following locations:
  - a) The ordinary high water mark
  - b) The building setback line
  - c) The rear lot line

**Policy Option**

**5.32 SIDE YARDS.** There shall be a side yard for each principle structure building. The minimum width of one side yard shall be 10 feet. The minimum combined width of both principle side yards shall be 25 feet. There shall be a side yard of 5 feet for accessory structures excluding fences.

**5.4 SUBSTANDARD LOTS (NR 115.05(1)(a)3.)** A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

**Notes:** The intent of this provision is to allow lots that were legally created that currently do not meet the minimum lot width and area requirements to be considered a building site provided all ordinance requirements can be met. Substandard lots that have been reconfigured by a certified survey map or consolidated into one legal description with the register of deeds, which result in a larger (closer to conforming) lot should be allowed to be able to be utilized as a building site. Additionally, lots that have a legal description for each substandard lot on record with the Register of Deeds but have one tax parcel number assigned by the Real Property Lister or Assessor for taxing/assessing purposes should be considered separate building sites and should not be considered consolidation. Lots that have had development over the lot lines should be combined with a legal description and recorded with a new deed prior to new development occurring.

**6.11 EXEMPT STRUCTURES (NR 115.05(1)(b)1m.)** All of the following structures are exempt from the shoreland setback standards in subd 6.1:

- (1) **Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.**

**Policy Option**

- a) The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.
- b) Boathouses shall be designed and constructed solely for the storage of boats and related equipment and shall not be used for human habitation.
- c) One boathouse is permitted on a lot as an accessory structure.
- d) Boathouses shall not be constructed where the existing slope is more than 20%.
- e) (5) Boathouses shall be set back a minimum \_\_\_\_ feet from the ordinary highwater mark and shall be constructed in conformity with local floodplain zoning standards.
- f) (6) Boathouses shall not exceed one story and \_\_\_\_ square feet in floor area.

- (2) **Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Stats.**

- a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
- b) The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
- c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

**Policy Option**

- e) The structure must be free standing and more than five-feet from a principal structure.
- f) An enforceable affidavit must be filed with the register of deeds prior to construction acknowledging the limitations on vegetation.

- (3) **Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.**

- (4) **Broadcast signal receivers, including satellite dishes or antennas that are one**

meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

- (5) **Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.**
- (6) **Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.**

**Policy Option**

(1) STAIRWAYS, WALKWAYS AND LIFTS. The Zoning Administrator may permit a stairway, walkway or lift in the setback area contained within the access and viewing corridor, only when necessary to provide safe pedestrian access to the shoreline. The permitted stairway, walkway or lift may not exceed 60-inches in width.

**6.2 REDUCED STRUCTURE SETBACK. (NR 115.05(1)(b)1.) Existing development pattern means that principal structures exist within 250 feet of the proposed principal structure in both directions along the shoreline. Where there is an existing development pattern, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot within 250 feet of the proposed principle structure. The shoreland setback may not be reduced to less than 35-feet from the ordinary high-water mark of any navigable waters.**

**Policy Options**

**(Choose one of the following)**

1. Where each side of the proposed principal building location is occupied by adjacent principal buildings which are located both within 100 feet of the proposed principal building footprint and less than 75 feet from the ordinary high water mark, the required setback from the ordinary high water mark shall be the average of the setbacks of the adjacent principal buildings, but in no case shall the setback be less than 35 feet- See note belowf. For the purpose of setback averaging, the measurements shall be made from the walls of the adjacent principal buildings.

Note – distance from the OHWM can be tailored if there is a greater setback as well as the minimum reduced setback through averaging as long as it is not less than 35'. Ex. The ordinance might have a 100' setback and in no case shall the reduced setback be less than 50'.

1) When an existing development pattern exists county may permit a reduced minimum setback for a new principal residential structure of not less than 35 feet if all of the following conditions are satisfied:

- a) The lot does not have a compliant building location which meets the applicable county setback, a minimum of 75 feet from the ordinary high water mark, due to unique property features.
- b) The depth of the structure is limited to 30 feet.
- c) The lot is a legal lot of record that complied with the applicable lot size standards in effect at the time that the lot was recorded at the county register of deeds office.
- d) The minimum setback shall be minimally reduced to create a compliant building location and may not be less than 35 feet from the ordinary high water mark.
- e) Soil disturbance and vegetation removal activities do not encroach into the primary shoreland buffer.
- f) All other provisions of this ordinance are met

## **7.0 VEGETATION (NR 115.05(1)(c))**

### **Policy Option**

7.3 CUTTING MORE THAN 35 FEET INLAND From the inland edge of the 35 foot area to the outer limits of the shoreland, the cutting of vegetation shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

## **8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING (NR115.05(1)(d))**

### **Policy Option**

8.1 GENERAL STANDARDS. Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 8.2 may be permitted in the shoreland area provided that:

8.11 It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

8.12 Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of sections 3.32 and 3.33 of this ordinance.

8.13 All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.

8.14 Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

8.2 PERMIT REQUIRED. Except as provided in section 8.3, a permit is required:

8.21 For any filling or grading of any area which is within 300 feet landward of the ordinary highwater mark of navigable water and which has surface drainage toward the water and on which there is either:

- (1) Any filling or grading on slopes of more than 20%.
- (2) Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%.
- (3) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.

8.22 For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary highwater mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

### **8.3 SOIL CONSERVATION PRACTICES AND AGRICULTURAL DRAINAGE MAINTENANCE.**

8.31 Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit under section 8.2 when designed and constructed to Natural Resources Conservation Service technical standards.

8.32 The maintenance of existing agricultural drainage systems shall be permitted in conformity with the following construction standards:

- (1) The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a special exception permit under section 8.22 is obtained.
- (2) Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.
- (3) Ditch banks shall be maintained in a sod cover and free of woody vegetation.

- (4) A 10 foot wide buffer strip of untilled, un-grazed sod cover shall be maintained adjacent to the ditch bank.

8.4 **PERMIT CONDITIONS.** In granting a permit under section 8.2, the County shall attach the following conditions, where appropriate, in addition to those provisions specified in sections 13.2 or 13.4.

8.41 The smallest amount of bare ground shall be exposed for as short a time as feasible.

8.42 Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.

8.43 Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.

8.44 Lagoons shall be constructed to avoid fish trap conditions.

8.45 Fill shall be stabilized according to accepted engineering standards.

8.46 Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.

8.47 Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.

## **9.0 IMPERVIOUS SURFACE STANDARDS. (NR 115.05(1)(e))**

**9.1 PURPOSE.** Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.

As is typical with most of the standards in NR 115, counties could choose to be more restrictive and regulate the impervious surface limits on properties beyond 300 feet or properties where only a portion of the property lies within 300 feet of the OHWM.

### **Policy Option**

1. Establish impervious surface standards to protect water quality and fish and wildlife habitat to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or portion of a non-riparian lot within 300' of the ordinary high water mark of any navigable waterway.

**9.2 CALCULATION OF IMPERVIOUS SURFACE. (NR 115.05(1)(e)1.)** Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in 9.45 may be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

Note: NR 115.05(1)(e)1m. clarifies that if an outlot lies between the OHWM and the developed lot or parcel and both are in common ownership, then the lot or parcel should be considered one property for the purposes of calculating the percentage of impervious surfaces. If there is an outlot or parcel that is owned by some other entity, for example a hydroelectric facility or a road, then the county should determine what level of control the property owner has over that lot. Can the property owner place structures, such as shoreline protection, piers, stairs etc... on that property or does some other entity

have control over development? If a property owner has no or little say over construction on that lot then that area should be considered a separate property.

For properties that have been “condominiumized” the impervious surface calculations apply to the entire property. The property is still under one legal description and the proposed expansion to a unit is not the only impervious surface calculated since the regulation states lot or parcel and not a unit. It will be important to remember also that mitigation applies to the property as a whole and not just to the portion of the frontage that might be in front of the unit impacted.

#### **Policy Option**

1. Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300' of the ordinary high water mark by the total surface area of the portion of the lot or parcel that is within 300 feet of the ordinary high water mark and multiplied by 100.

#### **Policy Option**

9.45 TREATED IMPERVIOUS SURFACES (NR115.05(1)(e)3m.) Impervious surfaces that can be documented to meet either of the following standards may be excluded from the impervious surface calculations under section 9.2. In **order for impervious surfaces to be considered exempt, documentation/evidence by a certified engineer, soil and water conservation department and/or other qualified position shall be submitted. A maintenance agreement shall also be signed by the property owner to properly maintain the property and/or devices in order for the impervious surfaces to continue being considered exempt.**

- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff and allows infiltration into the soil ,

#### **Policy Option**

9.5 EXISTING IMPERVIOUS SURFACES. (NR 115.05(1)(e)4.) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 9.3 or the maximum impervious surface standard in section 9.4, the property owner may do any of the following:

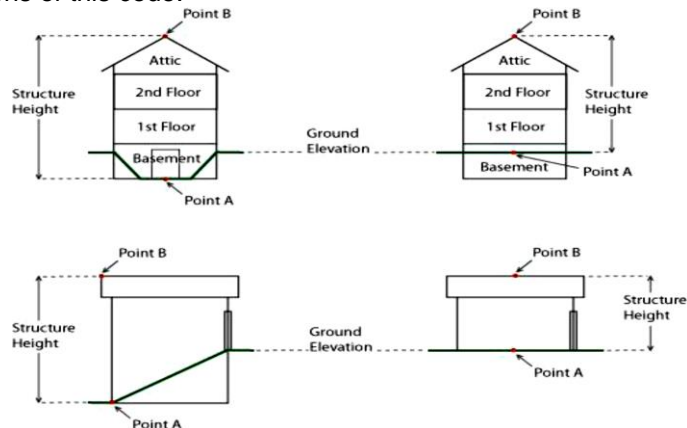
- (1) maintain and repair the existing impervious surfaces;
- (2) replace existing impervious surfaces with similar surfaces within the existing building envelope;
- (3) relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in s. Wis. Admin. Code NR 115.05 (1) (b).

**9.51 This section of the ordinance shall not be construed to supersede other provisions in the county shoreland ordinance. Reconstruction, replacement, relocation and expansion of existing structures must comply with other provisions in the county shoreland ordinance, the shoreland setback standards in sections 6.1 or 6.2 and the nonconforming structure provisions of sections 11.0 through 11.8. ( this reflects the note provision in NR 115)**

**10.0 HEIGHT. (NR 115.05(1)(f))** To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

**Policy Option**

10.11 Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



**11.0 NONCONFORMING USES AND STRUCTURES. (NR 115.05(1)(g))**

**11.2 GENERAL RULE FOR NONCONFORMING USES.** Pursuant to ss. 59.69(10m) and 59.692(1s), Stats.,

(1) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this s. 59.692 stats. may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

- a) The nonconforming structure was damaged or destroyed after October 14, 1997.
- b) The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

**Policy Options**

- c) A land owner has demonstrated by a permit application and approval the scope, nature, extent of the damage done as well as the dimensions of the damaged structure and proposed restoration.
- d) A land owner has demonstrated by a permit application the structure is no longer habitable due to the claims of mold or infestation. Documentation from a certified home building inspector or certified pest expert shall be required.

(2) An ordinance enacted under this section to which par. (1) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.



**11.5 EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK. (NR 115.05(1)(g)5.)** An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be expanded laterally or vertically, provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Vertical expansion is limited to the height allowed in section 10.0 and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0.
- (5) All other provisions of the shoreland ordinance shall be met.

**Policy Option**

Add 11.5(6) Evidence in the form of a building report from a professional licensed engineer or certified building inspector that certifies that the existing structure is structurally capable of supporting a vertical expansion.

**Policy Option**

**11.8 MAINTENANCE OF NONCONFORMING ACCESSORY STRUCTURES.** Accessory structures that were legally constructed before the adoption of this chapter may be maintained and repaired but may not be expanded or rebuilt unless authorized by s. 59.692(1s) Wisconsin Stats. Or unless they are made to conform to all other provisions of this ordinance.

- 1) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0

**12.0 MITIGATION. (s. 59.692(1v), Stats, NR 115.05 (1)(e)3., (g)5., (g)6.)** When the county issues a permit requiring mitigation under sections 6.11(b)(4), 9.4, 11.5, 11.7, the property owner must submit a complete permit application, that is reviewed and approved by the county. The application shall include the following:

1. A site plan that describes the proposed mitigation measures
  - a) The site plan shall be designed and implemented to restore natural functions lost through development and human activities
  - b) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.

**Policy Option**

2. An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
  - a) The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds prior to the issuance of the permit.

**13.23 EXPIRATION OF PERMIT.** Zoning permits shall expire (insert time) months from date issued if no substantial work has commenced.



## Policy Option

### 13.24 CERTIFICATES OF COMPLIANCE

13.25 No land or building shall be occupied or used until a certificate of compliance is issued by the zoning administrator.

- (1) The certificate of compliance shall certify that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.
- (2) Application for such certificate shall be concurrent with the application for a zoning permit.
- (3) The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning permit, if the building or premises or proposed use thereof conforms with all the provisions of this ordinance.

13.26 The zoning administrator may issue a temporary certificate of compliance for part of a building, pursuant to rules and regulations established by the county board.

13.27 Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption of this ordinance, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.

**15.0 ENFORCEMENT AND PENALTIES (NR 115.05(4)(j) Any development, any building or structure constructed, moved or structurally altered, or any use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator or the county zoning agency shall refer violations to the district attorney or corporation counsel who shall expeditiously prosecute violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars per offense, together with the taxable costs of action. Each day which the violation exists shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to s. 59.69(11), Wis. Stats.**

## Policy Option

- (1) **Penalty:** Any person, firm or corporation, including those doing work for others, who violates any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00 for each violation plus the cost of prosecution. Each day a violation exists shall constitute a distinct and separate violation of this Ordinance and as such, forfeitures shall apply accordingly. The Zoning Administrator shall refer violations to the Corporation Counsel who shall prosecute violations.
- (2) **Injunction:** Any use or action which violates the provisions of this Ordinance shall be subject to a court injunction prohibiting such violation.
- (3) **Responsibility for Compliance:** It shall be the responsibility of the applicants as well as their agent or other persons acting on their behalf to comply with the provisions of this Ordinance. Any person, firm or corporation, causing a violation or refusing to comply with any provision of this Ordinance will be notified in writing of such violation by the County Zoning Administrator or his designated Zoning Deputy. Each day a violation exists shall constitute a distinct and separate violation of this ordinance and, as such, forfeitures shall apply accordingly. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to Section 59.69(11), Wisconsin Statutes.
- (4) **Suspension of Permit:** Whenever the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator, determines there are reasonable grounds for believing there is a violation of any provision of this Ordinance, the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator shall give

notice to the owner of record as hereinafter provided. Such notice shall be in writing and shall include a statement of the reason for the suspension of the permit. It shall allow 30 days for the performance of any act it requires. If work cannot be completed in the 30 day period, an extension may be granted if reason of hardship prevail and can be verified. Such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to owner's last known address or when the owner has been served by such notice by any method authorized by the laws of Wisconsin. The owner of record has the right to appeal any decision by the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator or apply to the Vilas County Board of Adjustment for a Variance from the strict rule of the Ordinance within 30 days of receipt of a notice or order.

- (5) **Emergency Conditions:** Whenever the Zoning Administrator finds that an emergency exists such as sudden, unexpected occurrences or combinations thereof, unforeseen conditions or circumstances at the time beyond one's control, adverse weather conditions, meeting a timetable which requires immediate action to protect the public health, safety and welfare, the Administrator may, without notice or hearing, issue an order citing the existence of such emergency and may require that such action be taken as may be deemed necessary to meet the emergency. The Administrator shall notify the Chairperson of the Zoning Committee within 24 hours of such situations. Notwithstanding any other provisions of this Ordinance such order shall become effective immediately. Any person to whom such order is directed shall comply therewith immediately. Appeals or challenges to emergency orders may be brought after emergency conditions have ceased, to the Board of Adjustment.

## **16.0 DEFINITIONS.**

### **Policy Options**

**Although not defined in NR 115 or corresponding statutes, the following terms and suggested definitions are provided by the Department as recommendations for the effective implementation of a shoreland zoning ordinance.**

#### Accessory Structure (choose one)

- A detached subordinate building or a portion of a principal building, the use of which is incidental to that of the principal building.
- Means a detached subordinate structure which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use.
- A subordinate structure on the same property as the principal structure which is devoted to a use incidental to the principal use of the property. Accessory structures include, but are not limited to, detached garages, sheds, barns, gazebos, patios, decks, swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.(NR 118.03)
- Means any facility, structure, building or use which is accessory or incidental to the principal use of the property, structure or building. (NR 116.03(1)(1))

It will be important to decide whether or not decks/porches are treated as accessory structures or part of the principal structure. This will make a difference for averaging purposes and nonconforming options.

**Building** Any structure which is built for the support, shelter or enclosure of animals, chattels or movable property of any kind and which is permanently affixed to the land, does not include a dwelling.

#### Development (choose one)

- means any man-made change to improved or unimproved real estate, including, but not limited to the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of mobile homes; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition or extraction of

earthen materials.

- Means any artificial change to improved or unimproved real estate, including but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition or extraction of materials. (NR 116.03(5))

Drainage System" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge

Lot: A continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance

Lot area - The area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters.

Lot of Record: Any lot, the description of which is properly recorded with the Register of Deeds, which at the time of its recordation complied with all applicable laws, ordinances, and regulations.

Replacement Construction in which the principle building or portion thereof is torn down and replaced by a new structure or building or portion thereof.

Structural alterations: Any changes in the supporting members of a structure such as foundations, bearing walls, columns, beams or girders, footing and piles or any substantial change in the roof structure, or in the exterior walls.

"Structure" (choose one)

- Anything constructed or erected, the use of which requires permanent or temporary location on the ground, or attached to something having a permanent or temporary location on the ground, including but not limited to any building, dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences, retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto.
- Means any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed. (NR 116.03(45))
- Anything constructed, erected, or manufactured and placed on or in the ground.
- 

"Substandard Lots" A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements.

"Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.

## **Appendix C**

### **2010 Mitigation Methods Being Used by Wisconsin Counties**

**The following examples are taken from shoreland zoning ordinances that, in most instances existed prior to the recodification of NR 115 in January of 2010 and therefore should not be used in their entirety as model language for compliance with NR 115 after February 1, 2012. However, the ordinances include mitigation concepts and language that might be useful in developing a mitigation system under NR 115. Please keep in mind that mitigation measures must be proportional to the impacts of the permitted activity and must be enforceable under NR 115.**

#### **Douglas County**

##### **SECTION IX. LEGAL PRE-EXISTING USES AND STRUCTURES**

9.1 The lawful use of a building, structure or property which existed at the time this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of this ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the conditions of this ordinance.

##### **9.2 Legal Pre-Existing Principal Buildings**

(1) These provisions apply to principal buildings that are legally pre-existing as to any or all shoreland setback requirements. The shortest distance from the principal building to the Ordinary High Water Mark (OHWM) shall determine which Section of Section 9.2 (2), (3) or (4) applies.

(2) Legal pre-existing principal buildings less than 40 feet from the OHWM are permitted ordinary maintenance and repair, and interior and exterior improvements. Such principal buildings may be improved, as described in subsections (a)-(g) below, provided:

- (a) No more than 33% of structural members of existing external walls, and roof, foundation or basement are modified or replaced, exclusive of roof modifications necessary to integrate a new roof plane into an existing roof plane. (e.g., a 24' x 36' building has a perimeter of 120', therefore an alteration or replacement of no more than 39.6' of the exterior wall would be permitted).
- (b) Internal improvements are confined to the building envelope and may be constructed without a land use permit.
- (c) No new basements, foundations, additional stories, expansion, or accessory construction is permitted except for additions allowed under Section 9.2 (2)(e).
- (d) All other improvements, modifications, and/or repairs not addressed in Section 9.2 (2) are strictly prohibited.
- (e) A one-time expansion of 144 sq. ft. of enclosed dwelling area may be allowed either horizontally on the landward side of the structure or vertically.
- (f) Expansions under Section 9.2 (2)(e) require the mitigation requirements of Section 9.4.
- (g) Existing principal structures shall have at least 500 square feet of enclosed dwelling area to be eligible for expansion under Section 9.2 (2)(e).

(3) Legal pre-existing principal buildings 40-75 feet from the OHWM are permitted ordinary maintenance and repair. Such principal buildings may be improved and expanded provided:

- (a) The existing principal building is at least 500 square feet and less than 1500 sq. ft. of enclosed dwelling area.
- (b) No more than 33% of structural members of existing external walls and roof are modified or replaced, exclusive of roof modifications necessary to integrate a new roof plane into an existing roof plane and exclusive of landward facade modification necessary to integrate a new addition into an existing building. (e.g., a 24' x 36' building has a perimeter of 120', therefore an alteration or replacement of no more than 39.6' of the exterior wall would be permitted).

- (c) The expansion does not exceed 50% of the current enclosed dwelling area over the life of the structure and the resulting total enclosed dwelling area after expansion does not exceed 1500 sq.ft.. (Measured for all stories excluding an existing basement.) Proposed full, half or walkout basements will be included in determining the final enclosed dwelling area.
- (d) Additions and/or expansions shall be located on the landward side of the structure but may extend toward the sideyard in areas provided that they are beyond the required setback.
- (e) The mitigation requirements of Section 9.4 are implemented.

(4) Legal pre-existing principal buildings between 75 feet and the applicable lake/river class setback from the OHWM are permitted ordinary maintenance and repair. Such principal buildings may be improved and expanded provided:

- (a) The existing principal structure is less than 2000 sq. ft. of enclosed dwelling area.
- (b) No more than 33% of structural members of existing external walls and roof are modified or replaced, exclusive of roof modifications necessary to integrate a new roof plane into an existing roof plane and exclusive of landward facade modification necessary to integrate a new addition into an existing building. (e.g., a 24' x 36' building has a perimeter of 120', therefore an alteration or replacement of no more than 39.6' of the exterior wall would be permitted).
- (c) The expansion does not exceed 50% of the current enclosed dwelling area over the life of the structure (measured for all stories excluding an existing basement.) And the resulting total enclosed dwelling area after expansion does not exceed 2000 sq.ft. (Measured for all stories excluding an existing basement.) Proposed full, half or walkout basements will be included in determining the final enclosed dwelling area.
- (d) Additions and/or expansions may run parallel with the landward façade of the structure but may not be any closer to the OHWM and may not encroach into the side yard setback.
- (e) The mitigation requirements of Section 9.4 are implemented.

9.21 If the expansion of a principal building is prohibited because the requirements of Section 9.2 (2), (3), or (4) are not met, the property owner may still make the proposed expansion if:

- (1) The legal pre-existing principal building is permanently changed to a conforming principal building.
  - (2) The property owner appeals the determination of the zoning administrator and either the county board of adjustment or the circuit court find in the property owner's favor under Section 59.694 Wisconsin Stats.
  - (3) The property owner successfully petitions to have the property rezoned by amendment to this ordinance in accordance with Section 11.0 of this ordinance and Section 59.69(5)(e), Wisconsin Stats.
- 9.3 Legal Pre-Existing Accessory Structures.

- (1) Accessory structures that are legally pre-existing to any or all shoreland setback requirements and/or legally pre-existing to the use are only allowed ordinary maintenance and repair, and interior improvements.
- (2) The ordinary maintenance and repair of legal pre-existing boathouses that extend water ward beyond the ordinary high-water mark of any navigable waters shall comply with the requirements of Section 30.121, Wis. Stats.

9.31 If the proposed work on an accessory structure is in excess of what is allowed under ordinary maintenance and repair and/or interior or exterior improvements, the property owner may still make the improvements and/or ordinary maintenance and repair if:

- (1) The legal pre-existing accessory structure is permanently changed to a conforming accessory structure.
- (2) The property owner appeals the determination of the zoning administrator and either the county board of adjustment or the circuit court find in the property owner's favor under Section 59.694, Wis. Stats..
- (3) The property owner successfully petitions to have the property rezoned by amendment to this ordinance in accordance with Section 11.0 of this ordinance and Section 59.69(5)(e), Wis. Stats.

#### 9.4 Mitigation Measures.

##### (1) Required mitigation

A site plan and implementation schedule describing any required mitigation shall be submitted by the property owner or their authorized agent and approved by the Zoning Department prior to issuing the related land use permit(s). Mandatory practices for mitigation shall include:

- (a) Evaluation and if needed upgrading of any existing sanitary system on the subject property to meet current Douglas County and Department of Commerce regulations.
- (b) Implementation of standard erosion and storm water runoff control measures described in applicable sections of this ordinance.

(2) Additional requirements

- (a) Accumulating at least two (2) points from among the following proposed or current practices:
  - (1) Maintenance of an existing shoreland buffer area within 35 feet of the OHWM for Class 1&2 Lakes and within 50 feet for Class 3 Lakes and River/Streams (2 points).
  - (2) Restoration of the shoreland buffer area within 35 feet of the OHWM for Class 1&2 Lakes and within 50 feet for Class 3 Lakes and River/Streams (2 points).
  - (3) Restoration of native vegetation along both sideyards, minimum of 5 feet wide measured perpendicular to the lot line for the entire length of the lot. (1/2 point).
  - (4) Removal of legal pre-existing accessory buildings from within the shoreland setback area (1 point per building).
  - (5) Use of exterior building materials or treatments that are inconspicuous and blend with the natural setting of the site (1/2 point).
  - (6) Removal of waterward improvements (seawalls, dockage, artificial sand beach etc. and / or restoration of emergent aquatic vegetation (1/4 point for each distinct removal / restoration effort).
  - (7) Any other mitigation that is deemed appropriate by the Zoning Administrator may be used to meet the mitigation requirement of Section 9.4(2)(a).

(3) A Shoreland Mitigation/Preservation Affidavit shall be signed and recorded with the register of deeds prior to the issuance of a zoning permit for the expansion or improvement of a legal pre-existing principal building which requires mitigation under Section 9.2.

9.41 Type of Shoreland Buffer.

The type of shoreland buffer restoration required under Section 9.4(2) will be determined by the Zoning Department and/or the Land Conservation Department. The buffer type shall be either woodland, prairie, or wetland. The woodland and prairie buffers shall comply with the standards set forth in Section 9.41 Table 1. Wetland buffers will also be permitted where deemed appropriate by the Zoning Department and/or the Land Conservation Department.

9.42 Table 1. Shoreland Buffer Planting Standards

**Woodland Buffer****Prairie Buffer**

<b>Layer</b>	<b>Minimum number of species</b>	<b>Density per 100 square feet</b>	<b>Minimum number of species</b>	<b>Density per 100 square feet</b>	<b>Area Credits</b>
Tree Canopy	3	1	2	0.2	Existing tree canopy edge viewing corridor
Shrub Understory	4	1.5	2	0.5	Existing shrub understory wet edge viewing corridor
Groundcover Plant Plugs	1	70	5	70	Existing well vegetated native ground cover
Groundcover seeding	1	Varies	5	Varies	Existing well vegetated native ground cover

**9.43 Type of Vegetation Recovery.****(1) Natural Recovery**

Shoreland buffer areas that are suited for natural recovery will be allowed only after Zoning and /or County Land Conservation approval.

(2) Accelerated (planted) recovery Areas not suited to natural recovery will require plantings to establish native vegetation and must be planted. Areas such as lawns or eroded sites with no seed source will require plantings. Dense turf grass growths that have been maintained for several years will need to be removed and native plantings installed. Planted buffers must meet the required plant densities based on square footage of buffer area and the type of buffer (Table 1). Planting credits will be allowed for the viewing corridor, areas of existing native vegetation, and areas suited for natural recovery.

**9.44 Douglas County Native Plant List.**

Species of plants must be selected from the Douglas County Native Plant List and approved for shoreline buffers by the Zoning and /or Land Conservationist. Substitutions must be approved by the Zoning and /or Land Conservationist. Substitutions to the list will be allowed in the event of lack of plant stock or seed availability on a case-by-case basis. All plants may be transplanted from areas outside of the buffer zone.

**9.45 Planting Densities.**

Planting densities are based on the total area of the required buffer. Area credits calculated are subtracted from the total required density on an equal square footage of coverage basis. Trees must be at least 2 years old and greater than 1 foot tall to qualify as a credit or planting.

**9.46 Shoreland Buffer Plan Requirements.**

A shoreland restoration plan shall be completed for all required shoreland mitigation or preservations. Plans must be approved by the Zoning and Land Conservationist.

**(1) Shoreland Buffer Restoration Site Plans must include:**

- (a) Name and Address of property owner
- (b) Property address and legal description
- (c) Extent of the shoreland buffer
- (d) Scale (e.g. 1 inch = 10 feet)

- (e) North arrow
- (f) Ordinary high water mark (OHWM) location
- (g) Location of all structures in the shoreland buffer zone
- (h) Viewing and access corridor
- (i) Boundary of the shoreland buffer zone
- (j) Existing trees, shrubs, and native ground cover
- (k) Areas to be planted with trees, shrubs, and groundcovers
- (l) Implementation schedule
- (m) A plant species list; indicate if you are requesting substitutions from the prepared list
- (n) Erosion control practices ( to be installed prior to and during buffer establishment)
- (o) Water diversions and channelized flow areas
- (p) Buffer Maintenance (weeding, replanting)

(2) Implementation schedule.

The approved Shoreland Buffer Restoration Site Plan must be started within one year from the issue date of applicable permit. All plantings and any other required activities in the Shoreland Buffer Restoration Site Plan must be completed within two years of the permit issue date.

## 9.5 Replacement Of Existing Structures.

(1) Voluntarily Demolished.

Unless ¶ 2. applies, a structure may not be rebuilt or replaced closer than the applicable OHWM setback if it has been voluntarily demolished such that any of the following apply:

- (a) Replacement of 50% or more of the building.
- (b) The existing use of the structure has been discontinued for twelve consecutive months as a result of the demolition.

(2) Damaged or Destroyed by Violent Wind, Fire, Flood, Vandalism, Ice, Snow, Mold and Infestation

As required by Section 59.692(1s), Wis. Stats., if an existing structure has been destroyed or damaged after October 14, 1997 by violent wind, fire, flood, vandalism, ice, snow, mold and infestation, the structure may be reconstructed or repaired to the size, location and use it had immediately before the damage occurred, subject to the following conditions:

- (a) A structure that is destroyed or damaged due to a deliberate act by the landowner or by his or her agent, or due to general deterioration or dilapidated condition, may not be reconstructed or repaired, except in conformance with the standards of this ordinance.
- (b) Except as provided in Section 87.30 (1d), Wis. Stats., a building located closer than seventy-five feet (75') from the ordinary high water mark that is subject to regulation under a floodplain zoning ordinance may not be reconstructed or repaired except in compliance with the floodplain zoning ordinance.
- (c) The landowner shall bear the burden of proof as to the size, location or use a destroyed or damaged structure had immediately before the destruction or damage occurred.
- (d) Repairs are authorized under this provision only to the extent that they are necessary to repair the specific damage caused by violent wind, vandalism, fire or flood, and only that portion of the structure that has been destroyed may be reconstructed.
- (e) The private onsite wastewater treatment (septic) system serving the principle structure shall meet current standards for new construction.

## 9.6 Legal Pre-Existing Uses.

(1) Burden of Proof. A property owner claiming a legal pre-existing use and exemption from applicable regulations shall prove by a preponderance of the evidence that:

- (a) The use was legally established;
- (b) The use predated zoning provisions with which it does not comply;
- (c) The use was active and actual prior to adoption of such provisions and not merely casual and occasional or incidental to the principal use of the property in which case no vested right to continue the use shall have been acquired.

(2) No Expansion. A legal pre-existing use of a structure or premises shall not be expanded or enlarged. No such use shall be expanded within a structure which, on the date the use became legal pre-existing, was only partially devoted to such use.

(3) Discontinuance. If a legal pre-existing use is discontinued for twelve (12) consecutive months, any future use of the building, structure, or property shall conform to this ordinance. If the legal pre-existing



use of a temporary structure is discontinued, such legal pre-existing use may not be recommenced.  
(4) Nuisance. Legal pre-existing uses, which are nuisances, shall not be permitted to continue.

### **Eau Claire County**

#### Section 18.24.015 Nonconforming structures.

H. Additions to existing nonconforming principal structures are allowed subject to the following conditions:

1. The addition or alteration shall not exceed 500 square feet.
2. One addition is allowed during the lifetime of the nonconforming structure.
3. In the shoreland district, the shoreline vegetative strip as described in 18.19.060 shall be restored.
4. If located in the floodplain district, the addition or alteration must meet the requirements of 18.24.015 G.

18.24.015 Nonconforming structures. A structure which does not conform to the yard, height, parking, loading and access requirements of this subtitle may be continued to be used but shall comply with the following provisions:

A. Normal maintenance is not considered a modification or addition; normal maintenance includes painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities.

B. Structural repairs, alterations and expansions to non-conforming structures are not allowed, except as provided in 18.24.015 C. and E. through H.

C. Nonconforming structures damaged or destroyed by violent wind, fire, flood, or vandalism and destroyed after October 4, 1997 may be reconstructed or repaired to the size, location and use that existed immediately before the damage occurred, subject to the following.

1. A structure that is destroyed or damaged due to a deliberate act by the landowner or by his or her agent, or due to general deterioration or dilapidated condition, may not be constructed or repaired except in conformance with the standards of the zoning and building codes.

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2. If any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value. For nonconforming buildings that are damaged or destroyed by a non-flood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the non-flood disaster, provided that the nonconforming building will meet all of the minimum requirements under 44 CFR Part 60 or under the regulations promulgated thereunder.

**3. A plan for mitigating the adverse effects of nonconformity shall be developed and submitted to the department for review and approval. The plan shall include an implementation schedule and shall comply with the following requirements:**

**a. The private onsite sanitary system shall be brought up to current standards for new construction.**

**b. The 35 foot natural vegetation buffer strip shall be restored to meet code requirements.**

**c. Stormwater and runoff shall be controlled.**

**d. Exterior building materials shall be colored as to make the structure visually neutral or inconspicuous during the summer months.**

**e. Grading, filling, or dredging shall comply with Chapters 18.19 and 18.20.**

**f. Erosion control measures must be identified, approved and installed.**

4. The landowner shall bear the burden of proof as to the size, location, or use of a destroyed nonconforming structure or use had immediately before the destruction or damage occurred;

5. Repairs are authorized under this provision only to the extent that they are necessary to repair the specific damage caused by violent wind, vandalism, fire, or flood and only that portion of the nonconforming structure that has been destroyed may be reconstructed.

D. Once a nonconforming structure has been moved or altered to comply with the provisions of this subtitle, it shall not revert to nonconforming status;

E. The maintenance and repair of nonconforming boathouses which are located below the ordinary high water mark of any navigable waters shall comply with the requirements of Wis. Stat. § 30.121;

F. In the shoreland and flood plain overlay districts, a nonconforming structure which is destroyed or damaged by more than 50% by fire, flood, explosion or other calamity shall not be replaced,

reconstructed or rebuilt unless the structure meets the provisions of Chapters 18.19 and 18.20.

G. Nonconforming structures within the floodplain districts shall not be modified or added to unless they meet the following requirements:

1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area unless such modification or addition:
  - a. Has been granted a permit or variance which meets all ordinance requirements.
  - b. Meets the requirements in Chapter 18.24.
  - c. Will not increase the obstruction to flood flows or regional flood height. 641 1/20/09
  - d. Any addition to the existing structure shall be floodproofed, pursuant to 18.20.060, by means other than the use of fill, to the flood protection elevation.
  - e. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - i. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
    - ii. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    - iii. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
    - iv. The use must be limited to parking or limited storage.
- 2 No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair, or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and Wis. Admin. Code ch. Comm 83.
3. No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and Wis. Admin Code chs. NR 811 and NR 812.
4. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with 18.20.040 C. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph.
5. Where compliance with the provisions of the previous paragraph would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Land Use Appeals, using the procedures established in 18.31.020, may grant a variance from those provisions of the previous paragraph for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - a. No floor is allowed below the regional flood elevation for residential or commercial structures.
  - b. Human lives are not endangered.
  - c. Public facilities, such as water or sewer, will not be installed.
  - d. Flood depths will not exceed 2 feet.
  - e. Flood velocities will not exceed 2 feet per second.
  - f. The structure will not be used for storage of materials that are buoyant, flammable, explosive or injurious to property, water quality or human, animal, plant, fish or aquatic life. 642 1/20/09
6. If neither the provisions of 1 nor 4 above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the flood fringe if the addition:
  - a. Meets all other regulations and will be granted by a land use permit.
  - b. Does not exceed 60 square feet.
  - c. In combination with other previous modifications or additions to the building, does not equal or exceed 50% of the present equalized assessed value of the building.
7. In the FF, all new private sewage disposal systems, or additions to, replacement, repair, or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances and Wis. Admin. Code ch. Comm 83.
8. In the FF, all new wells, or additions to, replacement, repair or maintenance of a well shall meet the

applicable provisions of this ordinance and Wis. Admin Code chs, NR 811 and NR 812.

9. A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with 18.20.030 C, flood resistant materials are used, and construction practices and floodproofing methods that comply with 18.20.060 are used.

H. Additions to existing nonconforming principal structures are allowed subject to the following conditions:

1. The addition or alteration shall not exceed 500 square feet.
2. One addition is allowed during the lifetime of the nonconforming structure.
3. In the shoreland district, the shoreline vegetative strip as described in 18.19.060 shall be restored.
4. If located in the floodplain district, the addition or alteration must meet the requirements of 18.24.015

G. (Ord. 152-44, Secs. 13-19, 2008; Ord. 149-07, Secs. 6-8, 2005;

Ord 147-90 Sec.3, 2004; Ord. 146-23, Sec. 4, 2002; Ord. 144-53, Sec. 10, 2000; Ord.142-82 Sec.17-18, 1999; Ord. 134-36 Sec 13, 1990; Ord. 135-103, Sec.4, 1992; Ord. 134-36 Sec.14, 1990; Ord. 131-65 Sec.16, 1987, Ord. 130-48 Secs. 29-36, 1986; Ord. 128-24 Sec.34, 1984; Ord. 126-69 Sec.23, 1983; Ord.126-16 Sec.3(part), 1982).

## **Langlade County**

### **(3) LEGAL PRE-EXISTING STRUCTURES.**

(a) Burden of Proof. A property owner claiming a legal pre-existing structure and exemption from applicable regulations shall prove by clear and convincing evidence that:

1. The structure was legally established;
2. The structure predated zoning provisions with which it does not comply;
3. The structure was established prior to adoption of such provisions.

(b) Purpose. It is the intent of these provisions to balance the public objectives of this ordinance with the interests of owners of legal pre-existing structures by:

1. treating structures which are most contrary to the standards and objectives of this ordinance more restrictively than structures which are more nearly in compliance with ordinance provisions; and by
2. allowing for the improvement or expansion of principal structures essential to the reasonable use of a property provided the adverse effects of such improvement or expansion are adequately mitigated.

(c) General Provisions.

1. Except as provided in Section 17.12(3)(e) regarding structures which are damaged or destroyed, legal pre-existing **accessory** structures are limited to ordinary maintenance and repair and shall not be expanded. (Rev. Ord. #2-2007)

2. Legal pre-existing **principal** structures may be internally improved, maintained, repaired, or expanded provided that:

- a. the area of the existing structure is at least 500 square feet;
- b. the total length of external walls modified or replaced over the life of the structure does not exceed 25% of the total perimeter of the structure;
- c. the lifetime total of all expansions is limited to 50% of the structure's area which existed on the date the structure became nonconforming (note: on shoreland lots, this provision is superceded by total footprint restrictions of section 17.12(3)(d.);
- d. ordinary maintenance and repair shall include only those things specified in definitions, 17.03(3); and
- e. shoreline setback nonconformities comply with the provisions of Section 17.12(3)(d)

3. A structure not meeting structural or dimensional standards of this ordinance may not be expanded or enlarged so as to increase its dimensional nonconformity. Where practicable, additions to legal pre-existing structures shall conform to all applicable provisions of this ordinance.

4. **Nonconforming structures which are damaged or destroyed** by violent wind, vandalism, fire, flood, ice, snow, mold or infestation on or after March 1, 2006, may be reconstructed if the structure will be restored to the size, location, and use that it had immediately before the damage or

destruction occurred provided:

1. damage which is due to an intentional act of the owner may only be repaired in conformity with the ordinance;
2. the owner must establish the specific extent of damage to a structure and its improvements;
3. repair and reconstruction are limited to that part of a structure and its specific improvements which were actually damaged and similar building materials are employed;
4. repair and reconstruction are in compliance with all other provisions of applicable ordinances; if necessary for the structure to comply with applicable state or federal requirements, the structure may be larger than the size it was immediately before the damage or destruction, and
5. the mitigation requirements of Section 17.12(3)(d)4 are implemented.

(d) Pre-Existing Structures Not Meeting Shoreline Setbacks

1. Accessory structures: except as provided in Section 17.12(3)(d) 4c., all legal pre-existing accessory structures not meeting current standards are limited to ordinary maintenance and repair and shall not be expanded.

2. Principle structure total footprint. Total footprint is defined as the sum of the externally measured dimensions of the following levels:

Basement: where one or more basement walls are exposed and have doors and/or windows which can be used for ingress and/or egress, total footprint shall include 50% of the externally measured area of the basement.

First story: total footprint shall include 100% of the externally measured area of the structure, including screened or unscreened roofed porches.

Second story: where second stories exist, total footprint shall include 100% of the externally measured area of the structure.

Additional stories: where the existing roof pitch exceeds 8:12 and there is access to this story, total footprint shall be considered 25% of the area of this story as measured at the base of the story.

Exceptions to total footprint:

- Unwalled, covered entryways less than 100 square feet.
- Decks
- Overhangs and other items described in section 17.13.
- Attached garages

3. Legal pre-existing principal structures

a. **Principal structures less than 50 feet from the ordinary highwater mark** are permitted ordinary maintenance and repair (see definition of ordinary maintenance and repair in section 17.03(3)), provided that:

1) Existing Structure. The area of the existing structure is at least 500 square feet;

2) Internal Improvement. Internal improvement is confined to the perimeter of the existing principal structure including attached garages and screened and unscreened roofed porches; lateral expansion or accessory construction outside of the perimeter of the existing principal structure is not permitted except for additions of 100 square feet or less on the landward side of the structure;

3) Walls. The total length of existing external walls modified or replaced over the life of the structure shall not exceed 25% of the total original perimeter of the structure;

4) Basements. New basements or expansion of existing basements are allowed only where it is not possible due to limited lot size, steep slopes, or high-quality natural features to move the structure back from the water in compliance with section d.;

5) Second Stories. No additional stories or expansion of existing stories are permitted;

6) Roofs.

a.) Replacement of roofs as allowed under ordinary maintenance and repair is permitted with a maximum height of 26'.

b.) Construction of no more than two dormers with each dormer not exceeding an average of 5' in width as measured externally is permitted.

c.) Expansion covering an area less than 100 square feet is permitted.

d.) A proposed roof replacement that does not meet these requirements will only be permitted after the granting of a conditional use permit pursuant to section 17.64(3); and

7) Mitigation. The mitigation requirements of Section 17.12(3)(d)4. are implemented except for projects involving only ordinary maintenance and repair.

**b. Principal structures 50-75 feet from the ordinary highwater mark** are permitted ordinary maintenance and repair, and expansion provided that:

1) Existing Structure. The area of the existing structure is at least 500 square feet;

2) Expansion. Expansion is limited to 1,750 square feet of total footprint (total of existing and proposed construction). An additional 5% of total footprint may be allowed as stipulated in department guidance approved by the Water and Land Use Planning Committee;

3) Location of Expansion. Any addition shall be located on the landward side of the structure or in compliance with the required setback; if it is not feasible because of limiting site or existing structural conditions to place an addition on the landward side of an existing structure or in compliance with the required setback, an addition may be located no closer to the water than the existing structure provided it is set back as far as practicable;

4) Walls. The total length of existing external walls modified or replaced over the life of the structure shall not exceed 25% of the total original perimeter of the structure;

5) Basements. New basements are permitted only where it is not possible due to limited lot size, steep slopes, or high-quality natural features to move the structure back from the water in compliance with section d.; expansion of an existing basement is permitted;

6) Expansion of second stories. Expansion of existing second stories is permitted where such expansion complies with limitations on total footprint, does not exceed the existing structure's height, and is, if practicable, located on the landward side of the structure or in compliance with the required setback;

7) New second stories. Additions of new second stories that comply with limitations on total footprint with a maximum height of 26' are permitted;

8) Roofs. Replacement of roofs as allowed under ordinary maintenance and repair is permitted with a maximum height of 26'; a proposed roof replacement that does not meet these requirements will only be permitted after the granting of a conditional use permit pursuant to section 17.64(3);

9) Lot coverage. Limitations on lot coverage and land disturbing activities in Section 17.30(8) are observed; and

10) Mitigation. The mitigation requirements of Section 17.12(3)(d)4. are implemented except for projects involving only ordinary maintenance and repair.

**c. Principal structures 75 feet or more from the ordinary highwater mark** and which do not comply with Waterway Class Development Standards are permitted ordinary maintenance and repair, and expansion provided that:

1) Expansion. Expansion is limited to 2,250 square feet of total footprint (total of existing and proposed construction). An additional 5% of total footprint may be allowed as stipulated in department guidance approved by the Water and Land Use Planning Committee;

2) Location of Expansion. Any addition shall be located on the landward side of the structure or in compliance with the required setback; if it is not feasible because of limiting site or existing structural conditions to place an addition on the landward side of an existing structure or in compliance with the required setback, an addition may be located no closer to the water than the existing structure provided it is set back as far as practicable;

3) Walls. The total length of existing external walls modified or replaced over the life of the structure does not exceed 25% of the total original perimeter of the structure;

4) Basements. New basements are allowed only where it is not possible due to limited lot size, steep slopes, or high-quality natural features to move the structure back from the water in compliance with section d.; expansion of an existing basement is permitted;

5) Expansion of second stories. Expansion of existing second stories is permitted provided it:

- complies with limitations on total footprint
- does not exceed existing structure's height
- does not exceed 35'

If practicable, the expansion shall be located on the landward side of the structure or in compliance with the required setback are permitted;

6) New second stories. Additions of new second stories that comply with limitations on total footprint and a maximum height of 35' are permitted;

7) Roofs. Replacement of roofs as allowed under ordinary maintenance and repair is permitted with a maximum height of 35'; a proposed roof replacement that does not meet these requirements will only be permitted after the granting of a conditional use permit pursuant to section 17.64(3);

8) Lot coverage. Limitations on lot coverage and land disturbing activities in Section 17.30(8) are observed; and

9) Mitigation. The mitigation requirements of Section 17.12(3)(d)4. are implemented except for projects involving only ordinary maintenance and repair.

**d. Principal structures that are proposed to be relocated due to limitations** in sections a., b., and c. shall comply with waterway class shore setbacks and other applicable zoning ordinance requirements. In situations where there are limitations due to lot size, steep slopes, or high-quality natural features as stipulated in department guidance approved by the Water and Land Use Planning Committee that prevent the structure from complying with the required setbacks, a legal pre-existing structure shall be moved back from the water body to the greatest practicable setback. If the resulting setback is less than the required setback, the corresponding legal pre-existing requirements of the resulting setback shall apply to the relocated structure. (For example, a structure on a Class 1 lake which is relocated from 45 ft. to 65 ft. shall be restricted by standards of 17.12(3)(d)3.b. A proposed relocation that does not meet these requirements will only be allowed after the granting of a variance pursuant to section 17.64(4).

**e. Legal pre-existing structures which are located in more than one setback** zone shall comply with the standards of the more restrictive zone.

4. Mitigation is required to compensate for lost shore buffer area functions when legal pre-existing structures are improved or expanded within the shore setback area. Such mitigation requirements shall be listed as a condition(s) on the zoning permit:

- a. The associated privately owned wastewater treatment system must be evaluated and upgraded as appropriate in compliance with COMM83, Wis. Administrative Code.
- b. Native vegetation and water quality protection functions of the shore buffer area must be restored to the extent practicable following the standards in Section 17.30(13).
- c. Nonconforming accessory structures must be removed from the shore setback area. This requirement shall not apply to a detached garage which is in good repair and located at least as far from the ordinary highwater mark as the principal structure on the property.
- d. Standard erosion & storm water runoff control measures must be implemented.
- e. Exterior building materials shall blend with the natural ground cover in the vicinity of the construction.

**(13) SHORELINE BUFFER RESTORATION.** When zoning permits are required for principle structures on waterfront lots under Section 17.62(5), the applicants for such permits shall restore the water quality, habitat and natural beauty protection functions of the shoreline buffer area to the extent practicable.

**(a) Exemptions:**

- 1. Projects involving ordinary maintenance and repair as defined in Section 17.03(3) shall not require restoration.
- 2. The following activities requiring zoning permits shall not require restoration:
  - a) Foundation repair as defined in 17.03(3).
  - b) Replacement of roof trusses as specified in Section 17.12(3).
  - c) Additions of small decks or landings which do not exceed 225 square feet.
  - d) Construction of principle structures which are located 300 feet or greater from the ordinary high water mark.

**(b) Plan Requirements.** (Rev. Ord. #2-2007) An applicant shall submit a restoration plan for approval by the Land Records and Regulations Department prior to issuance of a zoning permit. The plan shall provide for the following:

- 1. Restoration on a waterfront lot shall, to the extent practicable, be conducted on all land within 50 feet of the ordinary high water mark as follows:
  - a. Maximum restorable area:
    - 1) For lots with a single principal structure, maximum length of shoreline over which the 50 ft. buffer must be restored shall be limited to the minimum lot width for the class of waterway on which the land is located. However, vegetation protection area regulations shall apply across the entire shoreline frontage of that lot.
    - 2) For lots with multiple principal structures, including but not limited to resorts, restorable area shall be determined by department staff after consideration of essential shoreline functions.
  - b. Pre-existing structures. For lots with legal pre-existing structures, restoration is not required within 15 feet of the principal structure.
  - c. Viewing Corridor. Sod, mulch, or other approved non-erodeable natural material is allowed in the view corridor to the minimum extent necessary for access and recreation as stipulated below:
    - 1) Wherever feasible, grass species used shall be no-mow/low-grow grasses which do not require cutting.
    - 2) One 200 square foot area at the water shall be allowed for swimming access as allowed in Section 17.30(8)(b)6.
    - 3) One 400 square foot area shall be allowed elsewhere in the view corridor for a picnic/play/lounge area.
    - 4) One path with a maximum width of 4 feet as allowed Section 17.30(6)(b).
    - 5) Storage areas for small boats, docks or similar items are allowed to the

minimum extent necessary and shall not be mowed. Pruning or culling of shrubs or trees to maintain this small area is allowed.

2. Restoration shall be conducted as follows:
  - a. Minimum restoration standard: within the restorable area described in Section 17.30(13)(1)(a), no vegetation cutting or raking shall occur and native shrubs and trees shall be planted throughout this same area in a manner that ensures cutting and raking will not occur. Refer to shoreland vegetation guidelines maintained by the Langlade County Land Records & Regulations Department.
  - b. Restoration measures exceeding this minimum standard may also be required by the Department in situations where the minimum habitat functions of the shoreline buffer. (For example, where natural regeneration is limited by site conditions).
  - c. Vegetation used in any restoration shall be native to the state of Wisconsin and shall be installed at densities that are adequate to reestablish the water quality, habitat and natural beauty protection functions of a shoreline buffer area. Density recommendations are available from the Langlade County Land Records & Regulations Department.
3. Once the shoreline buffer has been reestablished, vegetation removal and land disturbing activities are generally prohibited except as permitted by applicable provisions of Section 17.30(6), the vegetation protection area.

## **Lincoln County**

### **4.11 MITIGATION SCHEDULE MITIGATION REQUIREMENTS AND OPPORTUNITIES**

#### **Points are required for developing property under the following conditions:**

- Building or excavating on slopes from 10% to 20% - 2 points
- Building or excavating on slopes greater than or equal to 20 % - 3 points
- Building at reduced setbacks from the \*OHWM - 1 point for 1st 0-10 ft. & ½ point for each additional rounded 5 ft. increment
- Building at a reduced setback from the road right-of-way - 1 point for 1st 0-10 ft. and ½ point for each additional rounded 5 ft. increment (only applies to non-conforming lots under Sec. 11.13)
- Building on an existing lot that contains less than the required lot dimension – 1 point for the 1st reduction of 0-10,000 sq.ft. and ½ point for each additional rounded 5,000 sq.ft. reduction

#### **Opportunities to earn mitigation points include:**

- Increasing buffer depths - ½ point for each rounded 5 ft increment
- Reducing the width of the view / access corridor - 1 point for each rounded 5 ft. increment
- If lot is larger than prescribed minimum size - ½ point for each rounded 5000 sq. ft. increment
- Removal of legal non-conforming accessory structure - 1 point
- Removal of legal non-conforming habitable structure - 3 points
- Replacement of failing septic system due to setbacks or sizing - 2 points
- Replacement of failing septic system due to surface water or groundwater impacts - 3 points
- Removal of a sanitary privy - 1 point
- Removal of non-structural impervious surfaces - ½ point for each rounded 500 sq.ft. of pavement. ½ point for each rounded 1000 sq.ft. of hardpacked gravel
- Restoration of a Passive Buffer -1 point
- Restoration of a Active Buffer -2 points
- Installation of a pre-approved \*\* runoff control structure - 2 points
- Leaving percentages of the parcel in a natural state. 25-49% - 1 point. 50-74% - 2 points. >74% - 3 points



\* Only in special circumstances can a setback of less than 75 ft to the OHWM be authorized by mitigation – see Sections 10 & 11 of this ordinance.

\*\* The Lincoln County Land Conservation Department has a list of pre-approved runoff control structure designs. The use of a specific runoff control structure is subject to approval by the Zoning Department.

### Comparison of Standards

	<b>Proposed Low Sensitivity</b>	<b>Proposed Moderate Sensitivity</b>	<b>Proposed High Sensitivity</b>
<b>Lot Size</b>	30,000 sq. ft	40,000 sq. ft.	50,000 sq. ft.
<b>Shoreline Frontage</b>	150 ft.	175 ft.	200 ft.
<b>Lot Width</b>	150 ft.	175 ft.	200 ft.
<b>OHWM Setback</b>	75 ft.	90 ft.	100 ft.
<b>Side Yard Setback</b>	Cumulative of 25 ft. with a minimum of 10 ft.	Cumulative of 30 ft. with a minimum of 10 ft.	Cumulative of 35 ft. with a minimum of 10 ft.
<b>Road Setback</b>	*	*	*
<b>Impervious Surface Coverage</b>	Greater of 20% of Lot or 3000 sq. ft.	Greater of 18% of Lot or 3000 sq. ft.	Greater of 15% of lot or 3000 sq. ft.
<b>Buffer Depth</b>	35 ft.	50 ft.	60 ft.
<b>** View /Access Corridor</b>	No more than 30 ft. in any 150 ft.	No more than 30 ft. in any 175 ft.	No more than 30 ft in any 200 ft.
<b>Nonconforming Structures, Maintenance</b>	Fully maintainable structurally	Fully maintainable structurally	Fully maintainable structurally
<b>Nonconforming Structures, Expansion</b>	0-40' setback – can fully repair. Can potentially replace but not expand with conditional use permit (CUP) *** 40-75' – can potentially replace with CUP *** and/or one time expansion (up, down or to rear) to the lesser of a maximum of 100% of current or 1,500 sq.ft. total livable area > 75' no limit ****	0-40' setback – can fully repair. Can potentially replace but not expand with CUP*** 40-75' – can potentially replace with CUP *** and/or one time expansion (up, down or to rear) to the lesser of a maximum of 100% of current or 1,500 sq.ft. total livable area > 75' no limit ****	0-40' setback – can fully repair. Can potentially replace but not expand with CUP*** 40-75' – can potentially replace with CUP*** and/or one time expansion (up, down or to rear) to the lesser of a maximum of 100% of current or 1,500 sq.ft. total livable area > 75' no limit ****
<b>Boathouses</b>	New ones - 300 sq ft. max. at prescribed locations and subject to buffer mitigation requirements. Existing are fully repairable with permit and mitigation of buffer zone.	No new ones less than prescribed setback. Existing are fully repairable with land use permit and mitigation of buffer zone.	No new ones less than prescribed setback. Existing are fully repairable with land use permit and mitigation of buffer zone.

\* All Structures must adhere to required road / highway setbacks where applicable.

\*\* For lots with less than the prescribed width – refer to section 21.09(3) of the ordinance.

\*\*\*If structures are completely removed with the intent to rebuild, compliant building locations must be utilized if available and previous locations may not be available for use

\*\*\*\*Mitigation points and buffer replacement will be required to expand or build closer than setback prescriptions

NONCONFORMING STRUCTURES in the SHORELAND DISTRICT  
Ch. 21.13 Shoreland Zoning Ordinance

**(This handout is a summarization of the regulations and does not substitute for actual Zoning**

## Ordinances.)

A **Land Use Permit** is required for expansions, structural alterations and rebuild situations, however, is not required when internally improving or repairing non-structural elements.

**Rebuild** – means to tear down, dismantle, or remove a structure from its existing location such that nothing remains of the structural elements above the foundation.

**Shoreland Buffer Restoration** is required anytime you construct a new structure or an addition that will begin at a setback less than that which is required from the OHWM.

**Mitigation Points and/or additional permits may be required.**

**ACCESSORY STRUCTURES** Accessory structures that were legally constructed before the adoption of this Chapter:

1. **May be maintained, but may not be expanded or rebuilt** unless made to conform with the setbacks and standards for that particular lake classification (see requirements for shoreland development; ch. 21.07).
2. If the lot does not allow for the standard setbacks to be adhered to then a 30-foot building envelope may be allowed (see nonconforming lot standards; ch. 21.14).
3. If a 30-foot building envelope cannot be created then a variance may be applied for.

**PRINCIPAL STRUCTURES** Principal structures that were legally constructed before the adoption of this Chapter are subject to the following provisions:

### **Less than 40' from OHWM**

- 1) Principle structures less than 40 feet from the OHWM **may fully repaired but shall not be expanded or rebuilt** unless made to conform with the setbacks and standards for that particular lake classification (see requirements for shoreland development; ch. 21.07).
- 2) If the lot does not allow for the standard setbacks to be adhered to then a 30-foot building envelope may be allowed (see nonconforming lot standards; ch. 21.14).
- 3) If a 30-foot building envelope cannot be created then a conditional use permit may be applied for; ch. 21.13(2)(a)(4).

### **At least 40' but less than 75'**

1. Principle structures less than 75 feet but greater than 40 feet from the OHWM **may be fully repaired**
2. **May be expanded one time over the life of the structure.** The expansion shall not result in a total livable area that exceeds 1,500 square feet or double the structure's original livable area, whichever is less. Such expansion may be upward or downward within the same footprint, it may be located on the landward side of the structure or it may begin at any point beyond the required setback. When an expansion has been authorized by permit, a deed affidavit shall be recorded in conjunction with issuance of the permit to serve as notice to future property owners that the expansion opportunity has been exhausted.
3. **Cannot be completely torn down or rebuilt** unless made to conform with the setbacks and standards for that particular lake classification (see requirements for shoreland development; ch. 21.07).
4. If the lot does not allow for the setbacks to be adhered to then a 30-foot building envelope may be allowed (see nonconforming lot standards; ch. 21.14).
5. If a 30-foot building envelope cannot be created then a conditional use permit may be applied for; ch. 21.13(2)(a)(4).

### **At least 75' but less than 90' or 100'**

1. Principal Structures that measure at least 75 feet from the OHWM, but less than the new setback on Moderate (90 feet) and High (100 feet) Sensitivity Waters **may be maintained, repaired and expanded beyond 75 feet subject to the following limitations:**
2. Such structures may be expanded without limit if enough mitigation points are earned under section 21.07(3).
3. Such structures may be completely torn down and rebuilt in the present location with a zoning permit if enough mitigation points are earned under section 21.07(3) and a shoreland buffer is maintained in compliance with section 21.09.

## Mitigation Review Sheet

Applicant: \_\_\_\_\_ Nature of project: \_\_\_\_\_

### Site Conditions:

Slope indicated by applicant within building area \_\_\_\_\_ Field verified slope \_\_\_\_\_

Lot area as determined by deed or Land Records \_\_\_\_\_

Setback to the OHWM of proposed structure on application \_\_\_\_\_

Field Verified setback to OHWM (closest point as staked) \_\_\_\_\_

Setback of existing structure(s) to OHWM (closest point) on application \_\_\_\_\_

Field verified setback to OHWM of existing structure(s) \_\_\_\_\_

Setback to the road centerline of proposed structure on application \_\_\_\_\_

Field Verified setback to road centerline (closest point as staked) \_\_\_\_\_

### Mitigation Point Calculations

### Points Necessary

Are slopes 10% to 19%? (2 points)

\_\_\_\_\_

Are slopes  $\geq 20\%$ ? (3 points)

\_\_\_\_\_

Land area reduction below minimum lot size (applies to new developments only - 1 point for 1<sup>st</sup> 0-10,000 sq.ft. & ½ point for each additional rounded 5,000sq.ft.)

\_\_\_\_\_

Reduction from required water setback (1 point for 1<sup>st</sup> 0-10 foot increment and ½ point for each additional rounded 5 ft. increment)

\_\_\_\_\_

Reduction from required road setback (applies to nonconforming lots under Sec. 21.14 and 1 point is required for first 0-10 foot reduction and ½ point for each additional rounded 5 foot increment)

\_\_\_\_\_

### **Total Points Necessary**

\_\_\_\_\_

**\*\*NOTE:** Two examples were also provided in the email.

## Marquette County

### 16.1005 Zoning Provisions

- 1) Any construction or expansion of a dwelling or construction of an accessory structure greater than 75 feet from the ordinary high water mark shall require 3 mitigation points under Section 16.1010 of this Ordinance if all of the following criteria apply:
  - a) The construction is within 150 feet of the ordinary high water mark.
  - b) Area of construction has surface drainage into a navigable water.
  - c) The parcel is a waterfront property.
  - d) Total new construction, after January 1, 2001, exceeds 600 square feet in area.
  - e) Property is not in compliance with Section 16.1008 (Buffer requirements).
  - f) Property has a structure located less than 75 feet to the ordinary high water mark.

### 16.1008 Removal of Shore Cover

- 1) As authorized under ss 59.692(1v), the placement of a structure within seventy-five feet of the ordinary high water mark shall be permitted under the following conditions:
  - a) The structure is located a minimum of 35 feet from the ordinary high water mark.
  - b) The total area for all structures located within the legal setback area shall not exceed 200 square feet.
  - c) The structure has open or screened sides.
  - d) The property owner implements a Shoreland Buffer Restoration plan under Section 16.1009 of this Ordinance.

### 16.1012

#### 1) NON-CONFORMING STRUCTURES

***a) Except as set forth under sub. f below, legal non-conforming accessory buildings and structures are limited to ordinary maintenance and repair and shall not be improved or expanded.***

***b) Legal non-conforming dwellings are permitted unlimited ordinary maintenance, repair and remodeling provided it is confined to the existing building envelope and no more than 25% of the structural members of the existing external walls and roof are modified or replaced.***

***c) Legal non-conforming dwellings, which are 0-25 feet from the ordinary high water mark are prohibited from expansion.***

***d) Legal non-conforming dwellings, which are 25-50 feet from the ordinary high water mark are permitted a one time 25% square footage expansion provided:***

- 1) The expansion is on the landward side of the structure.***
- 2) There are no new basements or stories.***
- 3) Three mitigation points are obtained under Section 16.1010 of this Ordinance.***

***e) Legal non-conforming dwellings, which are 50-75 feet from the ordinary high water mark are permitted a one time 50% square footage expansion provided:***

- 1) The expansion is not on the shoreline side of the structure.***
- 2) Side expansion is limited to open air structures.***
- 3) No new stories are added.***

**4) Three mitigation points are obtained under Section 16.1010 of this Ordinance.**

Requirements

**16.1009 SHORELINE BUFFER RESTORATION**

***As required by other sections of this Ordinance, an applicant for a zoning permit shall restore the water quality, habitat and natural beauty protection functions of the shoreline buffer area. A restoration plan, to be reviewed for approval by the Land Conservation Department, shall be submitted and show compliance with the following criteria:***

- 1) Restoration must extend throughout the vegetative protection area described under Section 16.1008 of this Ordinance.
- 2) Re-vegetation species shall be selected from a listing of native vegetation maintained by the Land Conservation Department. Other species may be used with approval by the Land Conservation Department.
- 3) An affidavit shall be filed with the property deed, which informs any future property owner about the restoration plan and restrictions for removal of vegetation in the shoreline buffer area.
- 4) Once re-established, vegetation removal is generally prohibited, but may be done in accordance with Section 16.1008 of this Ordinance.

**16.1010 MITIGATION**

***A plan to mitigate for the adverse effects of construction, on a waterfront property, within 300-feet of the ordinary high water mark of a navigable water is required under other sections of this Ordinance. The number of mitigation points necessary for a zoning permit depends on the type, size and location of the construction activity. The Zoning Department must approve a mitigation plan and an affidavit shall be filed with the property deed. The following activities will be awarded the number of points indicated:***

- 1) The removal of a legal non-conforming structure, which is non-conforming because it does not meet the requirements of Section 16.1007(1) and which is less than 100 square feet in area (2 points).
- 2) The removal of a legal non-conforming structure, which is non-conforming because it does not meet the requirements of Section 16.1007(1) and which is greater than 100 square feet in area (3 points).
- 3) The implementation of a shoreland buffer restoration plan under Section 16.1009, which is on the property of the proposed construction (3 points).
- 4) The implementation of a shoreland buffer restoration plan under Section 16.1009, on a shoreland property other than that of the proposed construction (2 points).
- 5) At the discretion of the Zoning Administrator and with the approval of the Zoning Committee, up to three mitigation points may be approved for an activity that provides significant benefits to meet the objectives of this Ordinance.

## **Portage County:**

7.7.8.1 PURPOSE Mitigation, for the purpose of this Section is defined as “*balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.*” Mitigation is necessary to compensate for lost shoreland vegetative buffer zone functions when legal nonconforming structures are improved or expanded within the shoreland setback area and/or when maximum impervious surface areas are exceeded on a shoreland lot.

### **7.7.8.2 MITIGATION PLAN**

A plan that establishes options which adequately offset the impacts of development on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. Mitigation plans, which shall be designed to restore vegetative buffer zone functions and address storm water issues on the site, shall be submitted for review and approval to the Portage County Planning and Zoning Department. Submittal requirements for mitigation plan review are:

(A) A site plan that describes the proposed mitigation measures:

- (1) The mitigation requirements in the site plan shall be designed to restore natural functions lost through development and human activities.
- 2) The mitigation requirements in the site plan shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty (as identified by Portage County Planning and Zoning Department Staff).

(B) An implementation schedule which includes enforceable obligations on the property owner to establish and maintain mitigation options in perpetuity. Owners of the property shall record an instrument in the Portage County Register of Deeds Office detailing the mitigation plan and future management plan prior to issuance of the Zoning Permit.

7.7.8.3 MITIGATION PLAN COMPONENTS The following mitigation requirements will be assessed by Portage County Planning and Zoning Staff. The requirements will range in complexity based on stormwater retention and vegetative buffer capabilities. Requirements for mitigation will be based on the following and will be proportional in scope to the development that is proposed.

(A) Stormwater control from impervious surfaces draining to navigable waters of the State must be designed for a 25-year storm event and infiltrated before reaching navigable waters of the State. Storm events (25 year) are defined in the United States Department of Agriculture (USDA) Natural Resource Conservation Service Engineering Field Handbook Chapter 2. Living green roofs will not be calculated as impervious surface. Stormwater control is not limited to a single type, but can be a combination of natural or constructed surface basin(s), constructed subsurface drainage, and rain gardens.

(B) A mitigated shoreland vegetative buffer zone must adhere to the USDA Natural Resource Conservation Service Biology Technical Note 1: Shoreland Zoning. A shoreland vegetative buffer zone plan must address invasive species control and eliminate channelized flow. The following requirements will be mandated for all development, and the setback from the ordinary high water mark will be measured to the permitted structure.

(1) A building setback less than 100 feet from the ordinary high water mark, but greater than or equal to 85 feet, requires a buffer with a minimum depth of 45 feet measured from the ordinary high water mark, and a maximum width of 15 feet for the access and viewing corridor described in Section 7.7.6.2(B) of this Ordinance.

(2) A building setback less than 85 feet from the ordinary high water mark, but greater than or equal to 70 feet, requires a buffer with a minimum depth of 55 feet measured from the ordinary high water mark, and a maximum width of 10 feet for the access and viewing corridor described in Section 7.7.6.2(B) of this Ordinance.

(3) A building setback less than 70 feet from the ordinary high water mark requires a buffer with a minimum depth of 65 feet measured from the ordinary high water mark, and maximum width of 5 feet for the access and viewing corridor described in Section 7.7.6.2(B) of this Ordinance.

Note: If principal structure is within required shoreland vegetative buffer area, a 10 foot mow zone is allowed around principal structure only.

(C) All privately owned wastewater treatment systems shall be inspected to insure that all components are code compliant. Where systems are failing, replacement options must include relocating the system as far away from the ordinary high water mark as possible and/or implementation of holding tanks.

(D) Non-conforming accessory structures may be removed from the shoreland setback area. This option is designed to reduce the total amount of impervious surface on a site. This requirement may not apply to a detached garage located at least as far from the ordinary high water mark as the principal structure on the property.

(E) Owners of the property shall record an instrument in the Portage County Register of Deeds Office detailing the mitigation plan and future management plan prior to issuance of the Zoning Permit.

## **Racine County**

### **Sec. 20-1046. Mitigated shore yard structure.**

Notwithstanding section 20-1045 above, special zoning permission shall be granted for the construction or placement of a structure on property in a shore yard setback area if all of the following apply:

(1) The part of a structure that is nearest to the water is located at least thirty-five (35) feet landward from the ordinary highwater mark.

(2) The total floor area of all of the structures in the shore yard setback area of the property will not exceed two hundred (200) square feet. In calculating this square footage, boathouses shall be excluded.

(3) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.

(4) Once the location of the structure is approved by the county, a plan must be submitted by the applicant(s) for county approval. The plan must be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy (70) percent of the half of the shore yard setback area that is nearest to the water. The plan shall contain the following information:

a. Location of mitigated structure.

b. Location of vegetative buffer.

c. Number, type and size of proposed native vegetation to be installed or identification of existing plant/materials to be maintained.

d. Installation schedule/deadline.

e. Erosion control measures.

f. Maintenance plan to replace dead/diseased vegetation.

g. Before and after photographs of vegetative buffer area.

h. Description of how the project is to be implemented.

(5) The structure meets the height and street, side and rear yard setback requirements for the zoning district in which it is located.

(6) The structure shall not be used for principal or accessory uses not allowed in the district.

(7) Such structure shall be colored in earth tones to decrease the visual intrusion near the natural shoreline.

For purposes of this section, special zoning permission includes, but is not limited to the following: shoreland contract, conditional use, special exception, special permit, zoning variance, conditional permit and words of similar intent.

## **Sawyer County**

### **4.419 MITIGATION REQUIREMENTS**

INTRODUCTION: Mitigation is the requirement to restore (or create) shoreline buffer functions on all waterfront properties that do not meet Shoreline Vegetation Protection Area requirements (see Section 4.410 SHORELINE VEGETATION PROTECTION AREA). Mitigation shall apply only to the LOT for which a Land Use Permit is issued. This section is not applicable to those Chippewa Flowage properties subject to the restrictive covenants implemented by the 1984 Chippewa Reservoir Settlement Agreement (i.e., 100-foot and 200-foot buffer zones).

1) Waterfront properties with an existing intact shoreline vegetative protection area.

The application for a land use permit will require property owner certification on a form provided by the Zoning Department and photographic evidence of an intact shoreline vegetative protection area. Photographic evidence may be either digital or film and, if digital, may be transmitted to the Department via electronic means.

2) Waterfront properties without an intact shoreline vegetative protection area. The

application for a land use permit will require a Mitigation Plan and Implementation Schedule to be approved by the Zoning Department prior to the issuance of the land use permit.

3) Mitigation responsibilities for condominiums.

- (a) Mitigation is the responsibility of the condominium association and shall be in accordance with a mitigation plan approved by the Sawyer County Land and Water Conservation Department (SCLWD).
- (b) Once approved, a plan can only be amended with the approval of the SCLWD.
- (c) Land Use Permits shall not be issued until a copy of the approved plan has been submitted to the Zoning Department and the president of the association has submitted a letter to the Zoning department stating that the association accepts responsibility for the mitigation.

4) Mitigation responsibilities for mobile home parks with shoreline frontage.

- (a) Mitigation is the responsibility of the owner of the mobile home park and shall be in accordance with a mitigation plan approved by the Sawyer County Land and Water Conservation Department.
- (b) Once approved, a plan can only be amended with the approval of the SCLWD.
- (c) Land Use Permits shall not be issued until a copy of the approved plan has been submitted to the Zoning Department.

**Vilas County**

**ARTICLE XI: MITIGATION**

**11.1 Applicability.**

Mitigation is required whenever a property owner requests a zoning permit for construction on a waterfront lot where the proposed construction is located less than 300 feet from the OHWM and involves greater than three hundred square feet (>300 sq. ft.) of any new or existing structure. Mitigation is not required for rebuilding a structure under & 6.5.B. An additional permit fee may be required by, the Zoning Office for administration of the mitigation requirements.

**11.2 Mitigation Points Required.**

**A. Lakes Greater Than 50 Acres.**

The number of mitigation points required depends on lake classification and is set forth below in Table 4.

**Table 4**

<b>MITIGATION POINTS, FOR LAKES GREATER THAN 50 ACRES</b>			
<b>Sensitivity to Development</b>	<i><b>Current Level of Development</b></i>		
	<b>Low Development Level</b>	<b>Medium Development Level</b>	<b>High Development Level</b>
<b>High Sensitivity</b>	Five Mitigation Points	Six Mitigation Points	Six Mitigation Points
<b>Medium Sensitivity</b>	Four Mitigation Points	Five Mitigation Points	Five Mitigation Points
<b>Low Sensitivity</b>	Four Mitigation Points	Four Mitigation Points	Four Mitigation Points

**B. For Lakes 50 Acres and Less Six Mitigation Points Are Required.**

**C. For Class II Rivers and Streams Four Mitigation Points Are Required.**

**D. For Class I Rivers and Streams Six Mitigation Points Are Required.**

**E. Additional Points for Certain Structures.**



Additional mitigation points shall be required on properties with principal structures located closer than seventy-five feet (75') from the ordinary high water mark as follows:

1. Expansion of principal structures with any part located closer than forty feet (40') from the ordinary high water mark require two (2) additional mitigation points.
2. Expansion of principal structures with any part located closer than seventy-five feet (75') but more than forty feet (40') from the ordinary high water mark require one (1) additional mitigation point. This point is not added to the two mitigation points required if a structure is located closer than forty feet (40').

### **11.3 Mitigation Practices.**

Property owners may choose among the following mitigation practices to achieve the number mitigation points required.

#### **A. Buffer Zones.**

1. Points may be obtained for maintaining existing buffer zones or for creating and maintaining new buffer zones as set forth below.
2. Buffer Zone Options.
  - a. Primary Active Buffer Zone: Shore buffer zone within thirty-five feet (35') of the OHWM, including trees, shrubbery, underbrush and other natural vegetation, and subject to the conditions in ¶ A.3. (3) Three points. A shoreline recreational area as defined in Article VIII is allowed.
  - b. Secondary Active Buffer Zone: An additional fifteen feet (15') of buffer zone depth inland from the OHWM beyond the thirty-five feet (35') of buffer zone already established, providing a total of fifty feet (50') of buffer zone depth, subject to the conditions in ¶ A.3. (2) Two points.
  - c. Recreational Area Buffer Zone: Shore buffer zone along the entire shoreline, including within the space that may otherwise have been occupied by the recreational area, except that a foot path of no more than six feet (6') in width may be maintained, subject to the conditions in ¶ A.3. (2) Two points.
  - d. Passive Buffer Zone: Shoreland vegetation buffer area within thirty-five feet (35') of the OHWM, including un-mowed, grass or other under story vegetation, but without the tree and shrub layers required to meet the three-point mitigation standard. A shoreline recreational area as defined in Article VIII is allowed. (2) Two points.
  - e. Side lot Buffer Zone: A ten foot (10') wide side lot buffer zone including trees, shrubbery, underbrush and other natural vegetation extending along a side lot line for a depth of at least one hundred feet (100') from the OHWM. (1) One point. The side lot buffer area is subject to the conditions in ¶ A.3. Points for side lot line buffers may be additive, for a maximum of two (2) points, if buffer areas exist and are maintained along both side lot lines.
3. Conditions.
  - a. No mowing is permitted in the buffer zone.
  - b. The establishment of buffer zones except under ¶ A.2.d. are subject to a density of at least two (2) tree stems and four (4) shrub stems per one hundred square feet (100 sq. ft.) of buffer zone area is required. This density must be maintained through the maturity of the species.

#### **B. Removal of Structures.**

Points may be obtained for the removal of structures as set forth below.

1. Removal of a principal structure located within seventy-five feet (75') of the OHWM to a site that meets the OHWM set back requirements for new development on that water body. (3) Three points.
2. Removal of all non-principal, accessory structures located within thirty-five feet (35') of the OHWM, with the result that all such structures, including boathouses, are set back at least thirty-five feet (35') from the ordinary high water mark. (2) Two points.
3. Removal of all non-principal, accessory structures located between thirty-five feet (35') and seventy-five feet (75') from the ordinary high water mark, with the result that all such

structures, including boathouses, are set back at least seventy-five feet (75') from the ordinary high water mark. (1) One point.

4. No non-principal, accessory structures are located less than seventy-five feet (75') from the ordinary high water mark. This point is not added to points awarded for removal of structures from ¶ B.1. and ¶ B.2. above. (1) One point.

**C. Other Practices.**

1. At the discretion of the Zoning Administrator, up to three (3) additional mitigation points may be approved for restoration or protection activities that are likely to provide significant benefits to meet the objectives of this ordinance. Examples may include construction of a storm water detention basin or implementation of other storm water management plan activities, replacement of seawalls with bio-engineered structures, or removal of artificial sand beaches.
2. Factors to be considered in making the determination of number of points and approval of alternative mitigation practices include, but are not limited to:
  - a. Cost of implementation;
  - b. Runoff diversion and/or retention;
  - c. Lot configuration;
  - d. Parcel size;
  - e. Location of impervious areas;
  - f. Sensitivity and level of development of the water body; and
  - g. Significance toward meeting ordinance objectives.

**11.4 Mitigation Plan.**

**A. Development and Implementation of Mitigation Plan.**

1. A mitigation plan shall be submitted on forms provided by the Zoning Administrator for review and approval. The plan shall indicate the selected mitigation strategies and shall be signed by the property owner and filed with the Zoning Office prior to issuance of the zoning permit.
2. The mitigation measures shall be maintained in perpetuity, unless the property owner receives approval of a new, approved mitigation plan meeting the same point requirements.
3. Notwithstanding any other provision of this ordinance, the current owner is solely responsible for compliance with the terms of this Article.

**B. Certification of Completion.**

Within one year of issuance of the related zoning permit, the property owner shall complete the mitigation practices and shall certify in writing to the Zoning Administrator that the required mitigation has been completed. As part of the certification, the property owner shall submit photos documenting the mitigation measures.

**C. Subsequent Development.**

Subsequent zoning permit applications shall not require additional mitigation provided the mitigation measures are maintained.

**Washburn County**

Sec. 38-594. Shoreline setback nonconformities.

(1) *Nonconforming accessory structures.* Except as provided in subsection (g) all nonconforming accessory structures are limited to ordinary maintenance and repair (no improvement or expansion).

(2) *Nonconforming principal structures.*

(a) Nonconforming principal structures less than 50 feet from the ordinary high-watermark are permitted ordinary maintenance and repair. Expansion is not permitted except by variance. Such structures may be improved internally provided:

1. The existing structure includes at least 750 square feet of enclosed, habitable living space;
2. No more than 25 percent of the structural members of the existing external walls and roof are modified or replaced (allows matching of existing roof lines);
3. Internal improvement is confined to the building envelope (i.e. no new basements, additional stories,

lateral expansion or accessory construction outside of the perimeter of existing enclosed dwelling space are permitted but replacement of windows, doors, roofing and siding and upgrading of the insulation of a structure are permitted); and

4. The mitigation requirements of section 38-596 are implemented.

(b) Nonconforming principal structure 50 to 75 feet from the ordinary high-water mark are permitted ordinary maintenance and repair. Such structures may be improved and expanded provided:

1. The existing structure includes at least 750 square feet of enclosed, habitable living space;
2. No more than 25 percent of the structural members of the existing external walls and roof are modified or replaced (allows matching of existing roof lines);
3. Expansion is limited to a maximum 1,500 square feet of enclosed living space (total of existing and proposed construction);
4. Additions are located no closer than 75 feet to the ordinary high-water mark;
5. New basements or additional stories are not included (extension of an existing basement or second story is permitted);
6. Limitations on land disturbing activities in section 38-598 are observed; and
7. The mitigation requirements of section 38-596 are implemented.

(c) Nonconforming principal structures greater than 75 feet from the ordinary high-water mark are permitted ordinary maintenance and repair. Such structures may be improved and expanded provided:

1. The existing structure includes at least 750 square feet of enclosed, habitable living space;
2. No more than 25 percent of the structural members of the existing external walls and roof are modified or replaced (allows matching of existing roof lines);
3. Additions are located no closer to the ordinary high-water mark of the water body than the most waterward projection of enclosed living space of the existing structure, but not less than 75 feet;
4. Limitations on land disturbing activities in section 38-598 are observed; and
5. The mitigation requirements of section 38-596 are implemented.

(d) Nonconforming structures that are located in more than one setback zone shall comply with the standards of the more restrictive zone.

**(e) Mitigation is required to compensate for lost shore buffer area functions when nonconforming structures are improved or expanded within the shore setback area and is required when the enclosed living space of conforming principal structure is expanded by more than 50 percent, or when the principal structure is removed and replaced with a principal structure of equal size or larger. A person proposing such improvement or expansion shall submit a mitigation plan and implementation schedule for approval by the zoning department. The plan shall meet the Washburn County Shoreline Buffer Mitigation Standards of section 38-596(12).**

**1. The associated privately owned wastewater treatment system must be evaluated and upgraded as appropriate (Wis. Admin. Code DCOMM 83.055(3)(b)(1) and (3)).**

**2. Native vegetation and water quality protection functions of the shore buffer area must be restored to the extent practicable. Shoreland buffer zone standards of Wis. Admin. Code NR 115 in effect on the date of adoption of this amendment shall be held as the required standard: Current Wis. Admin. Code NR 115 minimum standard of 35-foot buffer with no more than one 30-foot access corridor.**

**3. Nonconforming accessory structures must be removed from the shore setback area.**

**4. Standard erosion and stormwater runoff control measures must be implemented.**

(f) Reserved.

(g) Nonconforming structures in the shoreland zone which are damaged or destroyed by violent wind, vandalism, fire or flood may be reconstructed provided:

1. Damage, which is due to an intentional act of the owner, may only be repaired in conformity with the ordinance;
2. The owner must establish the specific extent of damage to a structure and its improvements;
3. Repair and reconstruction are limited to that part of a structure and its specific improvements which were actually damaged and similar building materials are employed;
4. Repair and reconstruction are in compliance with all other provisions of applicable ordinances;
5. The mitigation requirements of section 38-596 are implemented.

Sec. 38-596. Shoreline vegetation protection area.

There shall be a shoreline vegetation protection area on each lot extending from the ordinary high-water mark to a line that is 25 feet less than the required shoreline setback (see section 38-605). Within this area the removal of trees, shrubs and ground cover and land disturbing activities are prohibited with the following exceptions:

- (1) Establishment of one viewing corridor for each lot by pruning and selective removal of trees and shrubbery. Clear cutting, filling, grading and other land disturbing activities are not permitted. Sufficient trees and shrubbery shall be retained to screen development from view from the water but provide a filtered view of the water. The viewing corridor shall be more or less perpendicular to the shore, no more than 30 feet wide in the dimension paralleling the shore and shall be set back at least ten feet from the side lot line. The 30-foot wide corridor shall be reduced in width proportionally for lots that have less than 100 feet of water frontage. A viewing corridor may not be established where the absence of vegetation provides a similar naturally occurring opening.
- (2) Construction of a pier, wharf, temporary boat shelter or boat lift. Placement shall be confined to waters immediately adjacent the viewing corridor described in subsection (1) unless such location is not feasible due to steep slopes, wet soils or similar limiting conditions.
- (3) One pedestrian access pathway to the shoreline provided it is:
  - a. Located within the viewing corridor unless such location is not feasible due to steep slopes, wet soils or similar limiting conditions;
  - b. Located and constructed so as to avoid erosion;
  - c. Located and constructed so as to maintain screening of development from view from the water;
  - d. The minimum construction necessary to provide access and includes no additional construction other than railings essential for safety;
  - e. No more than four feet wide; and
  - f. Constructed of materials, which blend with the natural ground cover in the vicinity of the pathway.
- (4) An elevated walkway or powered lift may be substituted for a pedestrian access pathway if:
  - a. It is the minimum construction essential to access the shore because of steep slopes, wet soils or similar limiting conditions;
  - b. It complies with the standards for location and construction of such pathways; and
  - c. Construction plans are approved by the zoning office.
- (5) Shoreline protection activities authorized by a state permit and erosion control measures approved by the county land conservation department which are designed to remedy significant, existing erosion problems.
- (6) Removal of dead and diseased trees which are a safety hazard or which endanger structures and the removal of noxious vegetation which poses a threat to health or safety, (i.e., poison ivy).
- (7) Roadways adjacent to permitted stream crossings.
- (8) Public and private watercraft launching sites provided they comply with the following standards and are authorized as a conditional use:
  - a. Construction on slopes steeper than 20 percent over a 50-foot horizontal distance is prohibited;
  - b. An access site on a residential property may not be approved if an alternative site on the waterway is available to the general public;
  - c. Paving of access sites on residential properties may not be approved;
  - d. Access sites shall be located within the viewing corridor unless such location is not feasible due to steep slopes, wet soils or similar limiting conditions;
  - e. A State Chapter 30 permit shall be obtained for all construction below the ordinary high-water mark; and
  - f. Vegetation removal and land disturbing activities shall be minimized and runoff shall be diverted or controlled so that erosion within the access corridor is avoided.
- (9) Fish and wildlife habitat management projects included in a department of natural resources approved management plan.
- (10) Commercial timber harvest is exempted from the provisions of this section related to the vegetation protection area and land disturbing activities if:
  - a. Such lands are located in a forestry or agricultural zoning district; and
  - b. Such activity complies with appropriate practices specified in Wisconsin's Forestry Best Management Practices for Water Quality published by the Department of Natural Resources or a plan approved by the county forestry committee.
  - c. Public lands (state, county, or federal). The Washburn County Forest ten-year management plan and

respective master plans are deemed to meet the intent of this article in as much as these plans establish riparian protection standards through aesthetic management zones and appropriate management practices to maintain water quality and wildlife habitat.

(11) Agricultural cultivation is exempted from the provisions of this section related to the vegetation protection area and land disturbing activities if:

- a. Such lands are located in an agricultural zoning district; and
- b. Such activity complies with appropriate practices specified in the Shoreland Best Management Practices for Agriculture published by the department of agriculture or a plan approved by the county agriculture committee.

(12) The Washburn County Zoning Committee shall adopt shoreline buffer mitigation standards. The shoreline buffer mitigation standards shall be an addendum to division 27 and shall be available in the office of the zoning administrator. The shoreline buffer mitigation standards shall be provided to all applicants whose zoning permit requirements include shoreline buffer mitigation under division 27, section 38-593 and this section as part of the application process.

### **Shoreland Buffer Mitigation Standards**

An instruction packet for landowners who are required to restore or create a shoreline vegetation protection area (buffer)

Adopted by the Washburn County Zoning Committee

March 21, 2000, amended, January 23, 2007

### **Washburn County Buffer Mitigation Standards**

#### **1. Introduction**

You have initiated an action with the Washburn County Zoning Office that requires mitigation of the buffer. Webster's Dictionary defines mitigation as, "to make mild, or less severe". A buffer, in this situation, is the area of natural vegetation that is (or should be) between your home and the lake. This buffer protects the water from human impact and provides many other environmental benefits. In your case, you must lessen (mitigate) the negative effects to the lake caused by development by preserving, enhancing or creating a buffer, sometimes called the shoreline vegetation protection zone.

This packet of information has been written to help you understand that requirement, so some of the legal jargon and statute references have been intentionally omitted. If you question this requirement however, the actual law and ordinances are available at the Zoning Office or on-line. This packet also only deals with the aspect of mitigation that pertains to buffers. Mitigation in general, may also entail other practices and requirements.

#### **2. Uses in the buffer**

A buffer may exist on your property or you may need to enhance or create one.

Generally, the buffer is a "no-disturb" zone where most activities are prohibited.

##### **Within the buffer you may not do the following:**

- A. Mow grass or clear other vegetation (unless classified as noxious).
- B. Remove trees (except those that are dead, diseased or that pose a safety hazard).
- C. Mechanically grade or redistribute soil.
- D. Fill areas classified as wetland.

The goal of buffer preservation or creation is to protect the lake environment and to filter the view of your property from the water. Nonetheless, it is important for you to utilize your property and the water;

therefore, **the following activities and provisions are allowable in the buffer:**

E. A viewing and access corridor through the buffer to "access" the lake or river and to achieve a "filtered view" of the water. This corridor must not be mowed or clear-cut and any vegetation removal should be selective and limited. One 30' wide corridor is allowed per waterfront lot (width shall be reduced proportionally for lots less than 100'). The corridor shall be at least 10' from neighboring property lines and shall be perpendicular to the shoreline. A corridor may not be established where the absence of vegetation provides a natural opening.

F. One access pathway. The pathway shall be located in the access corridor\* and shall be no more than 4' wide. It may be left natural, mowed, or constructed with mulch or natural colored stone (so long as the surface remains pervious). The pathway may also be of wood construction and may include stairs to reach the water. Stairs may include 40 sq. ft. landings at switchbacks for safety reasons. If wooden walkways and/or stairs exceed 65 sq. ft., a land-use permit is required from the Zoning Office. A powered pedestrian

lift may be placed in the corridor adjacent to the pathway. The location must also be approved by the Zoning Office.

\*If soil conditions or slope constraints do not allow safe construction of the path in the corridor, alternate locations must be approved by the Zoning Office.

G. Construction of a pier, wharf, temporary boat shelter or boat lift. Placement shall be confined to waters adjacent to the corridor, unless location is not feasible due to steep slopes or wet soils.

H. Shoreline protection activities authorized by State permit and/or erosion control measures approved by the Washburn County Land and water Conservation department.

I. Roadways adjacent to State permitted stream crossings.

J. Public and private watercraft launching sites provided:

- 1) A conditional use permit is obtained from the Zoning Office.
- 2) Construction is on slopes 20% or less over a 50' distance.
- 3) A residential site will not be approved if a public site is available.
- 4) No paving shall be done on residential sites.
- 5) The site is located in the viewing corridor.
- 6) A State Chapter 30 permit is obtained for all construction below the OHWM.
- 7) Vegetation removal is minimized and erosion in the corridor is controlled.

K. Fish and wildlife habitat management projects that are included in a State approved management plan.

L. Commercial timber harvesting provided:

- 1) The lands are public (County, State or Federal).
- 2) The land is zoned Forestry or Agriculture.
- 3) The activity complies the methods specified in Wisconsin's Forestry Best Management Practices for Water Quality.

M. Agriculture cultivation provided:

- 1) The land is zoned agriculture.
- 2) The activity complies with the appropriate practices specified in the Shoreland Best Management Practices for Agriculture.

### **3. Buffer mitigation required by law**

Wisconsin State Statutes 59.69, Wisconsin Administrative Code NR115 and the Washburn County Shoreland Ordinance (Chapter 38, Article IV, Division 27), define the buffer as "a zone of natural vegetation that extends from the ordinary high water mark (OHWM) inland". This buffer can be adjacent to a lake, river, creek or stream. The buffer extends the length of the shoreline and to a distance of 25' less than the building setback for that water body; normally from a minimum of 35' to a maximum of 100'. The width or size of your buffer that you must preserve, enhance or create depends upon the type of action you are involved with. By law, the specific actions listed below require mitigation. The noted size of the buffer is the requirement for that activity:

A. Renovation to, or enlargement of a nonconforming (closer to water than current setback) principal structure-35' buffer required

B. Expansion (more than 50%) or replacement of a conforming principal structure with a new one of equal size of larger- 35' buffer required

C. A permit is issued for a structure (deck or gazebo) in the setback area- 50' to 100' buffer required

D. Mitigation is added as a condition to a variance granted by the Board of Adjustments-35' buffer required

E. A nonconforming structure damaged by violent wind, fire or flood is replaced by structure of equal size- 35'buffer required

F. A buffer violation occurs- enforcement action plus 50' to 100' buffer replacement required

### **4. Methods and procedure**

Now that you know that buffer mitigation is a requirement associated with the activity you wish to do (or have done, if a violation), there are some steps to follow before you begin construction:

A. File an affidavit- By law, you must file an affidavit with the Zoning Office and record it with the Register of Deeds. This affidavit ensures that you will perform the mitigation and is attached to the deed to your property. **It must be filed prior to the issuance of a land-use permit.** A blank affidavit form is included with this packet, (attachment 1).

B. Obtain a land-use permit- As with any construction project in Washburn County, all structures require a land-use permit (unless the structure is separate and less than 65 sq. ft., all setbacks still apply). By law, you must have a sanitary permit before building a dwelling, including some additions. Check with the

Zoning Office if you are not sure if a sanitary permit is required.

C. Begin desired construction- Once you have obtained all necessary permits (including applicable State and Town permits), you may begin construction. As stated in the affidavit, you must also perform the mitigation. Since mitigation deals with the installation of plant materials and because the growing season is limited in this region, **you will have (2) two years from permit issuance for the buffer to be established.**

D. Prepare a mitigation plan- \*As soon as possible after obtaining your land-use permit, you should prepare your mitigation plan. This packet will assist you in doing so, or you may utilize a consultant. You should submit the plan to the Washburn County Land and Water Conservation Department (LWCD), who will work with you toward approval of your plan.

\*Note: By law, if you are seeking a permit to place a structure in the shoreland setback area (see item 3.C. above), your mitigation plan must be submitted when you file the affidavit at/or prior to permit issuance.

## **5. The mitigation plan**

You may create your individual mitigation plan or you may wish to hire a landscape consultant. A list of some consultants is provided with this packet, (attachment 2). Generally, the plan should show your buffer size, location of viewing corridor and pathway, location of structures, names, number and location of plant materials and so on.

A blank mitigation plot plan and example are included with this packet (attachment 3). It will instruct you on what information to include. There are basically four methods of mitigation recovery that will establish or maintain a buffer. Each method involves preserving or establishing three vegetative layers which are ground cover (grasses, etc.), shrub under-story and tree canopy. Attempts should be made to duplicate or mimic the undisturbed vegetative habitat that exists around your particular water body.

A. Avoidance- Your buffer may be totally intact or undisturbed. If that is the case, your affidavit will simply state that you will not disturb the area and will remain compliant with placement of your viewing corridor, etc.

B. Natural Recovery- Your buffer may be basically present but some of the under-story vegetation may have been removed, or the area may be regularly mowed to the shore. The goal here is to reestablish the natural condition, had the area not been disturbed. The recovery method in this case involves simply stopping all mowing or clearing and letting the area regenerate naturally.

C. Accelerated Recovery (enhancement) - This method is similar to natural recovery above, but entails actually installing some plant materials to achieve proper vegetation density, outlined in the table included in this packet, (Attachment 4). Simply stated, you will be filling in areas that are too thin or where the vegetation is missing.

D. Accelerated Recovery (creation) - This method is used when no buffer exists. The area in question may have been graded to bare soil or the site may have been mowed for many years. Creation will involve planting groundcover, shrubs and trees.

## **6. Prepare your plan**

This information is written for property owners who wish to prepare the mitigation plan themselves. At first, the concept may seem difficult, but as you become more comfortable with the requirements and the plan format, you will discover that it is simply planning to preserve what is the existing buffer, ceasing to disturb the existing buffer, or filling in places where vegetation is missing. In the extreme case, you may have to plan for and install a complete buffer. As stated previously, you still may wish to utilize a consultant or other knowledgeable person for plan preparation. Use of a consultant is recommended if you are required to complete a plan/installation involving accelerated recovery. You may also refer to the publication Shoreline Buffer Restoration, a Guide for Landowners, available at the Zoning Office. This publication discusses mitigation in detail and contains information of plan preparation. The steps below should be followed as you prepare your plan:

A. When you contact the Zoning Office about your project and/or permit requirements, you will be informed as to the requirements of buffer mitigation. This will include what size (depth and width) of buffer you should preserve or create (see section 3 above).

B. Refer to the blank plan template in this packet (attachment 3). Simply fill in the information and draw the particular features that are associated with your property.

C. Now, consider and visualize your existing buffer. Is it the correct size and undisturbed? Is it the correct size but sparsely vegetated (too thin)? It may be heavily vegetated but not of the correct depth. The existing condition will help you determine what recovery method you should use (see section 5 above).

D. If you have to install plantings, a specific vegetation density is required. Refer to the Table of Density Requirements (attachment 4), which denoted how many plantings should be instated per square foot per vegetative layer (groundcover, shrub or tree canopy). At this point you will be filling in areas that do not meet the density requirements. You may take credit for existing plants.

E. When selecting the plantings you wish to install, remember that the species should be native to the region and non-noxious. You may refer to the Washburn County Plant List (attachment 5) to select your species in each layer. All of the species indicated will grow in this region. You should however note which species grow in the soil and light conditions specific to your property.

F. When you have finished your plan, take or mail it to the Zoning Office. Be sure to include your signed and notarized mitigation affidavit (along with a check for \$11.00 made out to the Washburn County Register of Deeds) for recording. Once your affidavit is recorded and your plan is approved, you will be issued a land-use permit and you may begin construction.

## **7. Erosion control and buffer maintenance**

As with any construction project, you should utilize erosion control measures during buffer construction. Runoff from impervious structures should be diverted away from the water and matting or mulch should be used as groundcover plantings are taking root. The buffer is intended to be a natural area so little maintenance is needed. There is no need to mow, rake or fertilize. For detailed information on care and maintenance of the buffer, refer to Shoreline Buffer Restoration, a Guide for Landowners. If you have any questions about mitigation requirements, this packet or about plan preparation, you may contact the Zoning Office at 715-468-4690, or the Land and Water Conservation Department at 715-468-4654.

Prepared by Washburn County Zoning Office:

_____ Webster Macomber, Jr. Zoning Administrator Review and Approval:	_____ Date
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_____ Brad Robole Director, PLRMD Adopted by the Washburn County Zoning Committee:	_____ Date
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_____ <b>Ed Olund, Chair</b>	_____ <b>Date</b>
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## **Washington County**

23.14 MITIGATION. (1)(RR 00-23) This section has been created to offer alternatives if a property owner desires a lesser setback to the OHWM. The creation of buffer zones, removal of structures that do not meet setbacks and other measures may be used as negotiated options that are detailed in this section.

(2)(RR 00-23) Whenever mitigation is required by another section of this ordinance, the following requirements must be met:

- (a) A Class 3 waterbody requires 3 mitigation points.
- (b) A Class 2 waterbody requires 4 mitigation points.
- (c) A Class 1 waterbody requires 6 mitigation points.

(3)(RR 00-23)(AM 03-42)(AM 05-33)(AM 08-31) The following mitigation practices may be used to obtain the necessary mitigation points. Existing buffer zones may be used to meet the mitigation point totals.

(a) Buffer Zone Options.

1. Primary Active Buffer Zone – Shore buffer zone within 35 feet of the OHWM, including trees, shrubbery, ground cover and other natural vegetation, and subject to the conditions in sub. 23.14(3)(b). A shoreline recreational area as defined in sub. 23.18(90) is allowed. Three points.
2. Secondary Active Buffer Zone – An additional 15 feet of buffer zone depth inland from the OHWM beyond the 35 feet of buffer zone already established, providing a total of 50 feet of buffer zone depth, subject to the conditions in sub. 23.14(3)(b). Two points.
3. Recreational Area Buffer Zone – Shore buffer zone within 15 feet of the OHWM, including within the space that may otherwise have been occupied by the recreational area, except that a foot path of no more than 4 feet in width may be maintained, subject to the conditions in sub. 23.14(3)(b). Two points.
4. Passive Buffer Zone – Shoreland vegetation buffer area within 35 feet of the OHWM, including unmowed grass or other ground cover vegetation, but without the tree and shrub layers required to meet the 3 point mitigation standard. A shoreline recreational area as defined in sub. 23.18(90) is allowed. Two points.
5. Sidelot Buffer Zone – A 10 foot wide side lot buffer zone including trees, shrubbery, ground cover and other natural vegetation extending along a side lot line for a depth of at least 75 feet from the OHWM. One point. The side lot buffer area is subject to the conditions in sub. 23.14(3)(b). Points for side lot line buffers may be additive, for a maximum of 2 points, if buffer areas exist and are maintained along both side lot lines.

(b) Conditions.

1. No mowing is permitted in the undisturbed buffer zone.
2. The establishment of buffer zones except under sub. 23.14(3)(a)4. are subject to a density of at least one tree per 200 square feet and 2 shrubs per 100 square feet of buffer zone area. Ground cover shall be established to provide an adequate number of ground cover plants to establish complete coverage of exposed soil in one growing season. This density must be maintained through the maturity of the species.

(4)(RR 00-23)(AM 03-42) Removal of Structures. Points may be obtained for the removal of structures as set forth below:

- (a) Removal of an existing principal structure or parts of a principal structure located within the required setback from the OHWM to a site that meets the OHWM setback requirements for new development on that waterbody. Three points.
- (b) Removal of all existing accessory structures located within 35 feet of the OHWM, with the result that all such structures, including boathouses meet the setback required for the class waterbody. Two points.
- (c) Removal of any existing accessory structures located between 35 feet and the required setback from the OHWM, with the result that all such structures, including boathouses, are located to the required setback from the OHWM. One point.
- (d) No non-principal, accessory structures are located less than the required setback from the OHWM. This point is not additive to points awarded for removal of structures from sub. 23.14(4)(a) and (b). One point.

(5)(RR 00-23) Other Practices.

- (a) At the discretion of the administrator, up to 3 additional mitigation points may

be approved for restoration or protection activities that are likely to provide significant benefits to meet the objectives of this ordinance. Examples may include but are not limited to construction of a storm water detention basin or implementation of other storm water management plan activities, replacement of seawalls with bio-engineered structures, or removal of artificial sand beaches in compliance with all applicable statutes and provisions set forth in Wisconsin Administrative Code.

(b) Factors to be considered in making the determination of number of points and approval of alternative mitigation practices include, but are not limited to:

1. Runoff diversion and/or retention.
2. Lot configuration.
3. Parcel size.
4. Location of impervious areas.
5. Sensitivity and level of development of the waterbody.
6. Significance toward meeting ordinance objectives.
7. Type, density and filtering capacity of vegetation/ground cover.
8. Replacement of a private on-site wastewater treatment system with a code compliant system.
9. Removal of existing impervious areas.

(6)(RR 00-23)(AM 05-33) Mitigation Plan.

(a) A mitigation plan shall be submitted to the administrator for review and approval. The plan shall indicate the selected mitigation strategies and shall be signed and dated by the property owner and filed with the Planning and Parks Department prior to the issuance of the zoning permit.

(b) The mitigation measures shall be maintained permanently, unless the property owner receives approval of a new, approved mitigation plan meeting the same point requirements.

(c) Notwithstanding any other provision of this ordinance, the current owner is solely responsible for compliance with the terms of this ordinance.

(d) Recording. The mitigation plan shall be recorded in the Register of Deeds Office.

(7)(RR 00-23) Certification of Completion. Within 1 year of issuance of the zoning permit, the property owner shall complete the mitigation practices and shall certify in writing to the administrator that the required mitigation has been completed. As part of the certification, the property owner shall submit photos documenting the mitigation measures and the Planning and Parks Department staff may conduct an on-site compliance inspection.

(8)(RR 00-23) Subsequent Development. Subsequent zoning permit applications shall require additional mitigation and will be dependent on the scope of the project. These will be minimal, provided the original mitigation measures are maintained.

## **Waupaca County**

### **5.64 Open or Screened Structures (add to permitted buffer activities)**

Consistent with Wis. Stats. s. 59.692(1v), the construction or placement of certain structures within the shoreland setback area is permitted provided:

- 1) The part of a structure that is nearest to the water is located at least 35 feet landward from the ordinary high water mark.
- 2) The total floor area of all of the structures in the shoreland setback area of the property will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.
- 3) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- 4) **The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70 percent of the half of the shoreline setback area that is nearest to the water.**

### **8.31 Shoreline Setback Nonconformities.**

#### **1) Principal Structure Between OHWM and 50 Feet**

A principal structure which is nonconforming as to shoreline setback and which is located within 50 feet of the ordinary high water mark may be improved internally subject to the

limitation of Section 8.31(2)(a) but may not be expanded. Such improvement shall be confined to enclosed portions of the building envelope which existed at the time the structure became nonconforming and shall not include new basements or additional stories. However the following modifications are permitted:

- (a) Replacement of siding and upgrading of insulation;
- (b) Replacement of roofing and modification of roof pitch provided modification does not exceed a 6:12 (rise to run) roof pitch; and
- (c) Replacement and modification of windows provided no more than 50% of the waterward façade is converted to glass.

**Modifications to roof pitch and window placement permitted in Sections 8.32(1b&c) shall require 2 points of mitigation consistent with the provisions of Section 8.32(4).**

**(d) *Expansion of Existing Commercial Structures provided:***

The structure is limited to the permitted and conditional uses listed for the C-S (Service Commercial) zone;

Such expansion shall be located on the landward side of the existing structure;

There shall be no increase in the area of impervious surfaces;

The area of the expansion may not exceed 1500 square feet;

No more than 50% of the lot may be occupied by buildings; and

**A mitigation plan under Section 8.32(4) shall be submitted to the Zoning Administrator for approval prior to issuances of a zoning permit. The plan shall be implemented concurrent with expansion of the building.**

**2) *Principal Structure Between 50 Feet and Required Setback***

A principal structure which is nonconforming as to shoreline setback and which is located between 50 feet from the ordinary high water mark and the required setback may be expanded provided:

- a) No expansion is permitted within 50 feet of the OHWM;
- b) All expansion is located on the landward side of the existing structure, wherever practicable;
- c) The overall footprint of the enclosed nonconforming principal structure (living space) after expansion does not exceed 1700 square feet;
- d) Impervious surface standards of Section 6.16 are complied with;
- e) Only one expansion over the life of the structure is permitted;
- f) Expansion shall not include a new basement under an existing structure or conversion of a crawlspace to a basement but a basement may be constructed under a new addition and;
- g) Expansion must comply with all other ordinance provisions including mitigation requirements.
- h) As an alternative to expansion under Section 8.32(2)a-g above, an additional story no larger than the footprint of the original structure and not exceeding 28 feet in height may be permitted. Height shall be measured from the lowest exposed point of the structure to the peak of the roof.

**3)**

*In the application of Sections 8.32 (1) & (2), a structure shall be regulated by the requirements of the most restrictive zone (0-50 or 50- required setback) in which it is located.*

**4) *Mitigation***

***A plan to mitigate for the adverse effects of any shoreline setback nonconformity shall be implemented concurrent with external improvement or expansion of such structures. The plan shall be approved by the Zoning Administrator prior to issuance of a zoning permit and shall include a compliance schedule.***

The following mitigation practices are mandatory for all such projects:

- (a) The associated privately owned wastewater treatment system must be evaluated and upgraded as appropriate [COMM 83.03 & 83.25]; and
- (b) Standard erosion and storm water runoff control measures must be implemented and all mitigation activities shall comply with Section 6.0 regarding land disturbing activities.

In addition, a property owner shall choose at least four points from among the following mitigation practices: The property owner can use current equal practices to obtain the necessary 4 points.

- 1. Restore and maintain native vegetation and water quality protection functions of the shore buffer area within 25 ft. of the ordinary high water mark [1 point].
- 2. Restore and maintain native vegetation and water quality protection functions of the shore buffer area within 50 ft. of the ordinary high water mark [2 points].
- 3. Restore and maintain native vegetation and water quality protection functions of the shore buffer area within 75 ft. of the ordinary high water mark [3 points].
- 4. Restore and maintain native vegetation and water quality protection functions of both sideyards [1 point].
- 5. Remove nonconforming accessory buildings from the shoreline setback area [1 point per building of <100 sq. ft., 2 points per building of 100-400 sq. ft. and 3 points per building of >400 sq. ft.]. If there are currently no accessory structures within the shoreline setback, property owner receives 1 point.
- 6. Use exterior building materials that blend with the natural vegetation in the vicinity of the construction [1/2 point].
- 7. Other practices as agreed upon by the Zoning Department [as determined by the Zoning Department]. Examples may include replacement of seawalls for shoreline protection with bioengineering techniques or removal of artificial sand beaches.

Notice of the provisions of the approved plan shall be recorded with the title to the property by affidavit with the County Register of Deeds.

## Sample affidavit recording shoreland mitigation

Land Use Permit No.	This agreement is made between the Government Unit and the Real Property owner(s)
Governmental Unit  County Zoning Administration	Date:
Tax Key Nos. :  Parcel # PIN #	Real Property owner(s): YYYYY
<p>We, the Real Property owner(s) acknowledge that the Land Use Permit applies to the following property (legal description, attach separate sheet if necessary):</p> <p>Lot 1 of Certified Survey Map No. 2242; located in part of Government lot 3, T35N-R7E in the Town of ***, **** County, Wisconsin.</p>	
<p>Return to: ***** County Zoning Administration</p>	

1. Owner(s) agree to conform to the conditions of the aforementioned Land Use Permit. If these conditions are not met \*\*\*\*\* County does have the right to revoke said Permit. Owner(s) agrees that removal of the structures authorized by the Land Use Permit will not void this agreement or the conditions placed hereon.
2. Said Permit shall remain and be preserved upon this described property in perpetuity.
3. Owner(s) agree to allow authorized representatives of \*\*\*\*\* County to enter upon the owner's property at the above description to inspect the structure(s) authorized by permit and to determine if agreed conditions are being met.
4. This agreement shall be binding upon the owner(s), their heirs, successors and assigns. The owner(s) shall submit this agreement & recording fee to the \*\*\*\*\* County Zoning Administration, and the agreement shall be recorded by the Register of Deeds in a manner which will notify any individual referencing the deed to the property as to the existence of this agreement.

1.) Actively restore and maintain the shoreland buffer to a depth of \*\* feet from the ordinary high water mark for the entire shoreline frontage, mowing, trimming, and raking is not allowed within the shoreland buffer.

**All heirs and assigns of this property are bound and obligated to maintain the aforementioned mitigation.**

Owner's Name(s) – Please Print:  YYYYYYYY	Subscribed & sworn to before me on this date:	Governmental Unit Official Name – Please Print:
	Notary Public (Printed or Typed):	Governmental Unit Official Title – Please Print:
Notarized Owner(s) Signature(s):	Notary Public (Signature):	Governmental Unit Official Signature:
	My Commission Expires:	

**LAND USE PERMIT AFFIDAVIT INSTRUCTIONS:**

*ORIGINAL FORM MUST BE COMPLETED AND SIGNED IN INK OR IT WILL NOT BE ACCEPTED. IT MUST BE LEGIBLE AND COMPLETE OR IT WILL BE RETURNED.*

1. The document number space and the box in the top right must be left blank for Register of Deeds use. ALL OTHER BOXES MUST BE COMPLETED.
2. Be sure the correct tax parcel numbers are referenced.
3. The date will be filled in by the Zoning Department.
4. Print or type the property owner(s)' name as it appears on the deed. (all owner's listed on this affidavit must sign in the presence of a notary)
5. Fill in the legal description exactly as it appears on the most recent deed. If space is insufficient in area provided, you must attach a rider. *If the legal has been filled in by the Zoning Department it is your responsibility to review it completely and make sure that it is correct.*
6. Please read through the agreement completely.
7. The Governmental Unit Official information must be completed by the Zoning office.

THE ORIGINAL MUST BE RETURNED TO THE ZONING OFFICE WITH A RECORDING FEE OF \$\*\*\* for the 1<sup>st</sup> page and \$\*\*\* for each additional page.

Checks payable to: \*\*\*\*\* County. After this agreement has been recorded, the original will be returned to you for your records/reference.

## Appendix E: Ideas to Add Value to an Ordinance

### Value added options for NR 115 model ordinance

#### **Background**

The NR115 administrative rule represents the compromise that various interest groups reached in setting statewide minimum standards for shoreland zoning. Economic studies show that people value clear water and when all other factors are equal will pay more to live on lakes with better water quality. On the other hand, if water quality is degraded, lower property values result.<sup>12</sup>

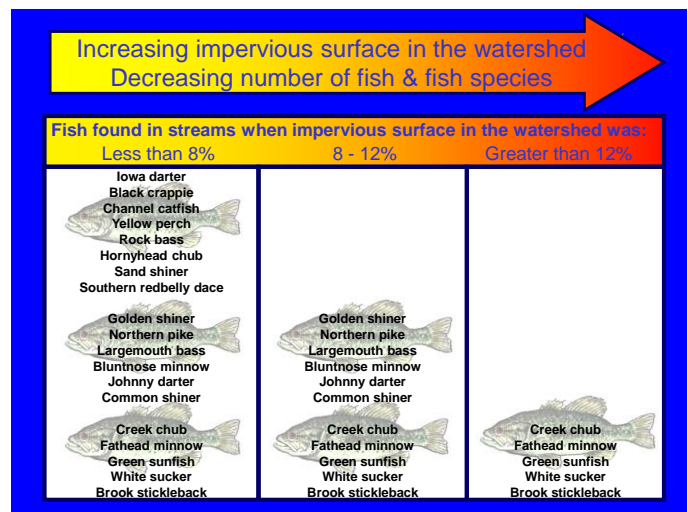
The minimum standards in NR115 are not sufficient to protect water quality, property values and fisheries. Take impervious surface standards as an example. Scientific research has found that watershed impervious surface levels above 10% are detrimental, yet the minimum standards are set at 15% without mitigation and 30% with mitigation. Many Wisconsin counties have already adopted shoreland zoning standards. The value-added options below describe shoreland zoning approaches to protect property values, water quality and fisheries more effectively than the state minimum standards in the following areas:

- Impervious surfaces
- Buffers
- Mitigation
- Shoreland setbacks
- Nonconforming structures or structures set back less than 75 feet from the OHWM
- Lot sizes and frontage widths

#### **Impervious surfaces**

**Rationale:** Impervious surfaces create runoff that carries pollutants to lakes and streams. Where there are more impervious surfaces, scientists have found higher levels of sediment, nutrients and trace metals, which result in low oxygen levels and algae blooms. Impervious surfaces also cause erosion and flooding.<sup>13</sup>

A study of 47 warm water streams in Wisconsin found that fish and insect populations decline dramatically when impervious surfaces exceed about 8-10% of the watershed. Streams with more than 12% imperviousness have consistently poor fish communities (see figure XX).<sup>14</sup> Similarly,



<sup>12</sup> Krysel, Charles et al. June 2003. Lakeshore property values and water quality: Evidence from property sales in the Mississippi headwaters region.

[www.mhbriverwatch.dst.mn.us/publications/lakeshore\\_property.pdf](http://www.mhbriverwatch.dst.mn.us/publications/lakeshore_property.pdf) Maine Department of Environmental Protection Lake Assessment Program, 2000. More on Dollars and sense of Impact of Lake Use and Water Quality.

<sup>13</sup> Center for Watershed Protection, 2003. Impacts of Impervious Cover on Aquatic Systems. Watershed Protection Research Monograph No. 1.

<sup>14</sup> Wang, L., J. Lyons, P. Kanehl, R. Bannerman, and E. Emmons 2000. Watershed Urbanization and Changes in Fish Communities in Southeastern Wisconsin Streams. *Journal of the American Water Resources Association*. 36:5(1173-1187); Wang, L., J. Lyons, and P. Kanehl 2001. Impacts of

in lakes the number of species and abundance of sensitive fishes decreased with higher amounts of watershed impervious surfaces.<sup>15</sup>

Twenty-two counties currently limit the amount of impervious surfaces on shoreland lots. They are: Bayfield, Calumet, Chippewa, Dane, Door, Forest, Kenosha, Langlade, Lincoln, Pierce, Polk, Price, Rusk, Sauk, Sawyer, Shawano, Sheboygan, Vilas, Washington, Waukesha, and Waupaca.<sup>16</sup>

**Approaches to protect property values, water quality and fisheries more effectively than the state minimum standards:**

1. **Remove 30% cap with mitigation:** This approach provides protection of water quality and fisheries while reducing staff time to develop mitigation plans and monitor their implementation and maintenance.
2. **Reduce percentages of impervious surfaces allowed:** This approach provides protection of water quality and fisheries more consistent with the scientific research which found that impervious surface levels above 10% are detrimental.
3. **Combine percentage limit with square footage limit:** Price County limits impervious surfaces on shoreland lots within 200 feet of the OHWM to no more than 15% of the lot area or 10,000 square feet whichever is less. This prevents more than 10,000 square feet of impervious surfaces on large lots. For instance, 10,000 square feet equals 5% of a five acre lot.
4. **Clearly define what surfaces are impervious:** Vilas County defines impervious surface areas as "surfaces, which limit or impede normal infiltration and/or cause additional runoff to other areas. Includes, but is not limited to buildings, structures, decks, walkways, driveways and parking areas (including graveled areas)."<sup>17</sup>

**Buffers**

**Mitigation**

**Menu version with required actions**

**Polk County version**

**Shoreland setbacks**

1. **Replace setback averaging language with setback reduction formula:**
2. **If setback averaging language is kept, increase the minimum setback allowed via averaging:** I think Vilas County has a minimum setback using setback averaging of 75'.

**Nonconforming structures or structures set back less than 75' from the OHWM**

**Approaches to protect property values, water quality and fisheries more effectively than the state minimum standards:**

1. **Do not include setback averaging language:** This approach prevents new buildings and building replacement at less than the shoreland setback.

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Urbanization on Stream Habitat and Fish Across Multiple Spatial Scales. *Environmental Management*.

28(2):255-266.

<sup>15</sup> Garrison, Paul et al. November 2008. Implementation and Interpretation of Lakes Assessment Data for the Upper Midwest. Final Report to the U.S. EPA. Grant No. X7-83254601, pp. 47 and 56. "Sensitive fish" are intolerant fish species that are expected to be sensitive to human caused degradation, usually thought of as a complex of effects including diminished water quality, sedimentation, and other forms of habitat degradation.

<sup>16</sup> WAL, 2009, Local Innovation in Shoreland Management. Oneida County removed impervious surface standards.

<sup>17</sup> Article 3.2 of the Vilas County Shoreland Ordinance amended November 25, 2009 <http://www.co.vilas.wi.us/dept/Zoning%20Forms/shorelandzoningordinance.pdf> accessed 12/9/09.



2. **Regulate structures based on their setback from the OHWM, rather than whether they are nonconforming:** This approach treats structures at the same shoreland setback equally, rather than differently if they were setback averaged or NC. Vilas County SL ordinance Section VI uses this approach.

<http://www.co.vilas.wi.us/dept/Zoning%20Forms/shorelandzoningordinance.pdf>

#### **Lot sizes and frontage widths**

**Rationale:** Increasing lot sizes and frontage widths is an indirect approach to limit the percent of impervious surfaces to protect their water quality, property values and fisheries. While a modest size house and driveway will likely exceed 15% of the area of a 20,000 square foot lot (15% = 3,000 square feet) it is unlikely to exceed 15% of an 80,000 square foot lot (15% = 12,000 square feet). The larger waterfront homes commonly built today result in more impervious surfaces that create runoff that carries pollutants to lakes and streams. Increasing minimum lot sizes and frontage widths leads to lower percentages of impervious surfaces. Seventeen Wisconsin counties have adopted lot sizes and frontage widths larger than the state minimum standards for some or all of their lakes and rivers.<sup>18</sup>

**Approaches to protect property values, water quality and fisheries more effectively than the state minimum standards:**

1. **Increase minimum lot sizes for new lots on all waters:** The following counties have adopted lake classification and require a minimum lot size of 30,000 square feet and 150 feet of frontage for all new lots in their least protected group of lakes and streams: Ashland, Bayfield, Burnett, Douglas, Lincoln, Oneida, Vilas and Washburn.<sup>19</sup>
2. **Increase minimum lot sizes the most for waters sensitive to development:** For the class of lakes that is most sensitive to waterfront development, and thus most protected, minimum lot sizes go as high as 5 acres and 400 feet of frontage in Waupaca County, and 10 acres and 300 feet of frontage in Douglas County.<sup>20</sup>

**Designate a buildable area on each lot:** The Cass County, Minnesota Land Use Ordinance requires a specified buildable area for each shoreland lot, ranging from 12,000 to 80,000 square feet. "Buildable area" is defined as: *the minimum required area remaining on a newly created parcel of land or platted lot after all public road rights-of-way, setbacks, bluffs, and wetlands are subtracted.*<sup>21</sup> Oneida County, Wisconsin uses a similar method by designating that except for public and private parks, 80% (for Class 1 waterways) or 90% (for Class 2 waterways) of the minimum lot area shall not contain any shoreland-wetlands, is above the elevation of the regional flood as defined in Wis. Admin. Code NR 116 and is at least two feet above the highest known water elevation of any body of water whose regional flood is undefined.

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<sup>1818</sup> WAL, 2007, County Level Water Classification in Wisconsin: An Assessment

[http://www.wisconsinlakes.org/publications/reports/07lakeclassification\\_assessment.pdf](http://www.wisconsinlakes.org/publications/reports/07lakeclassification_assessment.pdf)

<sup>1919</sup> WAL, 2007, County Level Water Classification in Wisconsin: An Assessment

[http://www.wisconsinlakes.org/publications/reports/07lakeclassification\\_assessment.pdf](http://www.wisconsinlakes.org/publications/reports/07lakeclassification_assessment.pdf)

<sup>2020</sup> WAL, 2007, County Level Water Classification in Wisconsin: An Assessment

[http://www.wisconsinlakes.org/publications/reports/07lakeclassification\\_assessment.pdf](http://www.wisconsinlakes.org/publications/reports/07lakeclassification_assessment.pdf)

<sup>21</sup> Sections 400 and 1401,

[http://www.co.cass.mn.us/esd/pdfs/ordinance/land\\_use\\_ord\\_2003.pdf](http://www.co.cass.mn.us/esd/pdfs/ordinance/land_use_ord_2003.pdf) accessed 12/09/09.

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